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His Excellency

John Adams.

whose perusal of this Pamphlet
with and opinion on the
Justice of its pretensions are
respectfully requested
by his friend & humble Sert.

Peter Martin

July 9th 1805.

MEMORIAL

OF

THE AGENTS

OF THE

NEW ENGLAND MISSISSIPPI LAND COMPANY

TO

CONGRESS,

WITH

A VINDICATION

OF

THEIR TITLE AT LAW

ANNEXED.

**
ADAMS 251.14

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UNITED STATES OF AMERICA.

TO THE PRESIDENT AND MEMBERS OF THE SENATE, AND TO THE SPEAKER AND MEMBERS OF THE HOUSE OF REPRESENTATIVES OF SAID STATES, IN CONGRESS ASSEMBLED,

The Memorial of the undersigned, for the holders of the title of the Georgia Mississippi Company, to lands lying within the Mississippi territory,

MOST RESPECTFULLY REPRESENT,

THAT at the time when congress saw fit to erect a government within the Mississippi territory, by their act passed June, 1798, the company, represented by the undersigned, presented a memorial to the then president of the United States, setting forth the nature of their title, derived from the grantees of the state of Georgia, and laying claim to the lands contained within the limits of their grants; and accordingly the rights of individuals are expressly declared by said act to be unimpaired thereby: which memorial was afterwards laid before certain commissioners, appointed by an act of congress passed the 8th day of May, 1800, for the purpose of treating with commissioners from the state of Georgia, for the cession of said territory; by the 7th section of which act the rights of individuals to the soil are declared to be as valid, as if said act had never been passed; and by the 10th section of the same act, the said commissioners are authorised to receive from

the claimants propositions for the compromise of their claims, and report the same to congress, with their opinion thereon. In obedience to this law, the claimants, whom the undersigned represent, attended at the seat of government, at a heavy expense, during the whole negotiation between the commissioners of the two powers, and exhibited their claims to the commissioners of the United States, entered a caveat with them against the purchase of any part of the lands claimed by your memorialists; but at the same time manifested their readiness to enter into a compromise and adjustment of their claims, on reasonable terms, agreeably to the intentions of the act. The commissioners, however, from motives of prudence, declined entering into a negotiation with the claimants, until they had finally completed the articles of cession with the commissioners of the state of Georgia; but constantly assuring the claimants, that proper regard would be had to their claims in the adjustment. Accordingly, in the articles of cession, they saw fit to reserve the right, on the part of the United States, to appropriate five millions of acres of the ceded territory, or the proceeds thereof, for the purpose of compensating the claims not otherwise provided for in the articles of cession: of the claims not so provided for, your memorialists aver those under the act of Georgia of January, 1795, were specially and principally contemplated by the commissioners of the United States, and assented to by those of Georgia. As the treaty of cession required the ratifica-

tion of the state of Georgia, and the commissioners of the United States chose to submit the same to the approbation of congress, they deferred any further negotiation with the claimants until such ratification should be had: accordingly, at the session of congress of 1802....3, the claimants again attended, and under the then existing law, exhibited to the commissioners their claims, and the derivation of their titles from the grantees of the state of Georgia; and after many communications between the commissioners and the claimants, certain propositions were made by the latter, but not acceded to by the former; upon which, at the end of the session, they made their report to congress, with their opinion of a compromise, which not being accompanied with the assent of the claimants, was not acted upon by congress; but at the same time they passed another act, in which they made an appropriation of the five millions of acres, for the purpose of compensating for such claims on said territory, as congress should see fit to provide for, agreeably to the terms of the treaty; and by said act the government again invited the claimants to make propositions of compromise to the commissioners, who were directed to report the same to congress at their next session; and the claimants were therein called upon to record all the evidences of their title in the office of the department of state, at their own expense. In obedience to this act, they have at great cost recorded the evidences of their title, and attended the whole of the last session of con-

gress, ready to enter into the proposed compromise; but a bill introduced for the purpose of empowering commissioners to make a final adjustment with the claimants, was postponed until the first day of the present session.

Your memorialists, therefore, again present themselves before congress, respectfully to declare their readiness to enter into a negotiation for a compromise of their claims, within the conditions and limitations of the cession of Georgia, with any commissioners who may be authorised thereto, reserving all their rights at law in case the compromise should not be effected.

This mode of compensating the losses, and extinguishing the claims on said territory, by compromise, your memorialists conceive to be congenial to the views and intentions of the government of the United States, as expressed in the several acts above alluded to, and assented to by the state of Georgia, in their act of cession, and has been so confidently relied on by the claimants as a pledge of the *public faith and honor*, that they have hitherto looked to it, as a certain resource of indemnity, and have patiently submitted to the heavy expenses, with which its tedious progress has been attended.

Should congress think it more for the *interest* of the United States, that the titles of the claimants to their *whole extent* should have a *judicial decision*, they humbly request, that congress would be pleased to pass an act, directing the title of your memorialists to be submitted to the decision and final determination of the judges of the supreme

judicial court of the United States, agreeably to the principles of law and chancery: to such an act your memorialists will cheerfully submit.

They have hitherto forborn to make any display of the legal and equitable principles on which their whole title rests; as they had conceived that the government of the United States, by their repeated public acts on the subject, had contemplated a different mode of settlement, and by repeatedly inviting the claimants to make propositions of compromise, had intended to merge all considerations of the original transaction by a mutual concurrence in such compromise. But as in the course of the public debates on this subject, and by the report of the commissioners, their title at law has been called into question, they have thought it expedient to lay before congress, a vindication of their title, and an exhibit of the principles and authorities upon which they should support it in any of the established courts of law or chancery; and they have also endeavoured to answer all the objections that they recollect to have been yet made against them. This vindication is now in the press, and the undersigned ask leave to present a copy, when ready, to each member, who by a full examination thereof, may be enabled to judge for himself what mode of settlement it will be most for the *interest* of the United States to adopt: whether a *compromise*, the extent of which is limited by their own arrangements, with their grantors, and by which the United States will certainly secure to themselves above thirty millions of acres of land,

or a *legal decision* by which the United States *may* lose that quantity in the attempt to secure the additional five millions. The claimants are *now* ready to accede to either mode.

If it should be said, that we may pursue our rights at law without the interposition of congress, we answer....that to contend with the government of their country, is not only unpleasant to the feelings of very many of the claimants, but, they are ready to acknowledge, might be deeply injurious in its consequences; for although under some of the monarchies of Europe, their humble subjects are indulged with "*The petition of right*," under which, by the decrees of their judges in chancery, the hands of their sovereigns may be amoved from the possession of the lands of their subjects, yet for the citizens of the American republic no such right is recognized; if, therefore, from motives of policy, the government of the United States shall see fit to hold these lands unalienated for a century to come, the claimants during that period must remain without remedy, except by actual entry, in hostility to the claims of the nation, they could recover possession by judgment of law, only lot by lot as the government may see fit to dispose of them; a circumstance which must involve them in a multiplicity of law suits for time immemorial, the expenses and delay of which would probably be more ruinous to them than the loss of their property in the first instance. "*The delay of justice* "*is its denial.*"

It is, therefore, to the magnanimity and high sense of honor and justice, which govern the measures of the American republic, that they confidently appeal; and cannot doubt, that under the influence of these virtues, congress will feel it right to adopt one or other of the two methods above proposed for the immediate settlement of their claims.

In all events your memorialists most respectfully and earnestly pray, that congress will come to some definitive resolution on the subject, that the claimants may no longer be exposed to a fruitless and expensive pursuit of what they conceive to be their rights.

And as in duty bound shall pray your memorialists.

PEREZ MORTON,
GIDEON GRANGER,

Agents of the holders of the Georgia Mississippi Company's purchase, under the name of the New England Mississippi Land Company.

A VINDICATION

OF

THE RIGHTS

OF THE

NEW ENGLAND MISSISSIPPI LAND COMPANY,

BY

THE AGENTS OF SAID COMPANY.

When the law decrees the field to Titius, it is matter of conscience no longer to withhold it from him.

TUCKER'S BLACKSTONE.

CITY OF WASHINGTON:

A. & G. WAY, PRINTERS.

.....

1804.

A VINDICATION

OF THE

RIGHTS

OF THE

NEW ENGLAND MISSISSIPPI LAND COMPANY.

WHEN we accepted an agency from the New-England Mississippi Land Company, we were led to believe nothing remained for consideration or adjustment between the United States and the claimants, only the quantum of property to be granted to the sufferers, as a just and reasonable indemnity.

We did not contemplate the necessity of discussing the merits of our claim, or the justice of our expectations from government.

But the aspect is changed; the right of redress is denied, and by some even the conduct and motives of the claimants are doubted.

In this situation, the duty we owe to the company we represent, to the welfare of our own families and to our personal characters, compels us to enter into an investigation of the merits of the objections offered against our claim. Neither our talents, nor the leisure we can command, allow us to give that lucid demonstration, which the importance of the subject demands.

In this discussion we shall not trace the foundation of the titles, claimed by the several states, back to the discovery of the continent.

Neither shall we draw the line of distinction between cases, where the fee and the usu-fruct belong to the same person, and where the fee is vested in one and the usu-fruct in another. The principles which have governed on these subjects, ever since America was inhabited by Europeans, are well known. Neither shall we attempt to excite compassion by a display of our sufferings; by describing the ruin of thousands; or by that strong view of the leading features of the case, which forces itself upon the mind whenever it is considered. Nor shall we dare to tread on the ground of policy, which belongs exclusively to the government.

While the opinions of all shall be treated with respect; while nothing shall be written calculated to give cause of offence, or to injure the feelings of any man; we shall maintain our rights upon the known principles of law, justice and equity, and shall deliberately combat all acts and opinions in opposition to these rights, which do not appear to be warranted by the constitution and laws of this nation.

The New England Mississippi Land Company claim, that, for the consideration of 1,138,000 dollars, which, with interest for nine years, amounts to 1,752,520 dollars, they have purchased, and are the only lawful proprietors of, all that tract of country, including islands, lying and being within the following boundaries: beginning on the river Mississippi, where the latitude of 31 deg. and 18 m. north of the equator intersects the same; thence a due east course to the middle of Don or Tombigby river; thence up the middle of the said river to

where it intersects the latitude of 32 deg. and 40 m. north of the equator; thence a due west course along the Georgia Company line to the river Mississippi; thence down the middle of the same to the place of beginning: subject however to the native right in part, under and by virtue of a certain deed of conveyance executed to them, on the thirteenth day of February, 1796, by Nicholas Long, Thomas Glascock, Ambrose Gordon, and Thomas Cumming, who owned and were seized of the same territory under and by virtue of certain letters patent, or deed of conveyance, executed to them by George Matthews, governor of the state of Georgia, on the twenty-sixth day of January, 1795, and in obedience to an act passed by the legislature of Georgia, on the seventh day of January, 1795; for which purchase the said Nicholas Long and others, paid 155,000 dollars into the treasury of Georgia.

The following facts never have been controverted. They are incontrovertible.

1st. That the state of Georgia, from the declaration of independence until she made sale of the lands in question, ever claimed to be lawful proprietors both of soil and jurisdiction.

2d. That during all the time aforesaid, she exercised every right, and did every act evidential of ownership, of which the property was then capable: during which period the United States made no claim to said lands.

3d. That on the said seventh day of January, A. D. 1795, the legislature of Georgia, duly elected and convened, passed the aforesaid act, and in

and by that act, among other things, it is enacted, that all the aforesaid tract of country shall be sold to the said Nicholas Long, &c. for the price of 155,000 dollars; and the governor, upon the performance of certain things on the part of said Nicholas Long, &c. as in said act is set forth, shall issue to said Long, &c. a grant of said tract of territory; of which territory said Long, &c. were bound to reserve 620,000 acres for the use of the citizens of Georgia, exclusively to be by them subscribed for and held on the original terms of purchase.

4th. That said Nicholas Long, &c. strictly complied with all the conditions of said act; and George Matthews, esq. governor of said state of Georgia, in obedience to the said act, on the twenty-sixth day of January, 1795, issued a grant of said tract of country to said Long, &c. under all the forms and solemnities of the laws of Georgia.

5th. That in the month of September, 1795, the said Nicholas Long, &c. by their agent, contracted with the members of the New England Mississippi Land Company, to sell to them all the aforesaid tract of country.

6th. That on the thirteenth day of February, 1796, at Boston, in the commonwealth of Massachusetts, the aforesaid agreement was carried into full effect, and all the aforesaid tract of territory, with the reservation of citizens rights, was, by said Nicholas Long, &c. granted to the trustees of the New England Mississippi Land Company, for the use of the members of said company, and for the consideration of 1,138,000 dollars, which sum has

been duly and lawfully paid, and was, on the day last aforesaid, secured by negotiable notes; so that by the laws of those states, in which the members of said company live, and to which they are and have been amenable, the real or supposed want of consideration could not be pleaded against the aforesaid demand.

And 7th, That the members of the New England Mississippi Land Company, are *bona fide* purchasers of the said tract of territory for *full consideration; and without notice of any real or supposed fraud.*

On this plain statement of facts, one would think that no diversity of opinion could exist; and that all would be ready to proclaim the validity of our title.

Yet that title has been questioned by very high authority....Authority to which we bow with reverence; as well as to the talents and virtues of the persons to whom it is and has been intrusted.

But the gentlemen will pardon us. There is at stake the comfort and security of those, whose existence we have caused. There is at stake the happiness of thousands who have confided their all to our discretion and fidelity. A trust so important will not be neglected.

We have carefully examined the arguments which have been brought against us; we have diligently inquired for their foundation in the constitution and laws of our country, with minds prepared to yield to conviction; but we have sought in vain. The constitution and laws appear clearly in our favor.

Whether this results from ignorance, interest, or prejudice, let others decide.

In the first place it is objected....

THAT THE STATE OF GEORGIA NEVER WAS THE LAWFUL PROPRIETOR OF THIS TRACT OF TERRITORY.

The title of Georgia was originally derived,....

1st. From the charter of June 9th, 1732; by which was granted to that colony "all those lands, "countries and territories, situate, lying, and be- "ing in that part *of South Carolina*, in America, "which lies from the northern stream of a river "there called the Savannah, all along the sea coast "to the southward into the most southern stream "of a certain other great water or river called the "Altamaha, and westward from the heads of the "said rivers, respectively, in direct lines to the "south sea; and all that space, circuit and precinct "of land, lying within the said boundaries, with "the islands in the sea lying opposite to the eastern "coast of the said lands, within twenty leagues of "the same, which are not already inhabited or set- "tled by any authority derived from the crown of "Great Britain."

2d. From the proclamation issued under the great seal of Britain, on the 7th of October, 1763, whereby the provinces of the Floridas were limited by 31 deg. north latitude, and the rest of the country left either for the government of Georgia or South Carolina.

3d. From a cession made by South Carolina to Georgia on the 28th of April, 1787; which cession declares, art. 1st. "the most northern branch or "stream of the river Savannah, from the sea or

" mouth of such stream to the fork or confluence " of the rivers now called Tugaloe or Keowee, and " from thence to the most northern branch or " stream of the said river Tugaloe, until it inter- " sects the northern boundary line of South Ca- " rolina, if the said branch or stream extends so " far north; reserving all the islands in the said " rivers Tugaloe and Savannah to Georgia: but " if the head spring or source of any branch or " stream of the said river Tugaloe does not extend " to the north boundary line of South Carolina, then " a west line to the Mississippi to be drawn from the " head spring or source of the said branch or stream " of Tugaloe river, which extends to the highest " northern latitude, shall forever hereafter form the " separation, limit, and boundary, between the " states of South Carolina and Georgia."

And in art. 3d, " The state of South Carolina " shall not hereafter claim any lands to the eastward, " southward, southwest-ward or west of the boun- " dary above established; but hereby relinquishes " and cedes to the state of Georgia, all the right, ti- " tle and claim, which the state of South Carolina " hath to the government, sovereignty and jurisdic- " tion in and over the same; *and also, the right and* " *pre-emption of soil from the native Indians, and all* " *the estate, property and claim which the state of* " *South Carolina hath in, or to, the said lands.*"

South Carolina derived her title to these lands from the charter of Charles the 2d, of the 24th of March, 1662: which granted to the colony of Carolina all the country between latitude 31 and 36 deg.

30 m. north of the equator, and extending from the Atlantic west to the South sea. By the second charter in 1664, Carolina was extended south to the 29th deg. of north latitude.

Afterwards these charters were surrendered, and Corolina was divided into two provinces, North and South Carolina; and South Carolina was limited on the north by the completion of the 35th deg. of latitude. *Her southern and western limits remained as established by the charters of* 1662 *and* 1664. "When the colony of Georgia was erected, the country of which it was composed was considered by the British government as part of *South Carolina*.

"Lord Percival, Oglethorpe and others, who first projected the Georgia scheme, petitioned the crown for a grant of land *in South Carolina*, for that purpose*. In the reports of the board of trade on this petition, Georgia is called "the colony to be estab- "lished *in South Carolina*†." After the establishment of the colony the command of its militia was to *remain* with the governor of *South Carolina*‡. Even in the charter, the lands to be included are described as "lying and being in that part of *South* "*Carolina*, in America, which lies," &c‖. Lord Granville's part of South Carolina not having, at any time, been separately allotted to him, his right in this country, as one of the proprietors, was admitted still to exist; and accordingly the charter granted only seven eighths of the land to the trustees §, to whom lord Granville afterwards conveyed

* Att. gen. rep. 84. † Ibid. 87. ‡ Ibid. 91. ‖ Ibid. 91. § Ibid. 100.

his eighth. And in an instruction to the governor of *South Carolina*, of a date subsequent to the charter, *Georgia* is mentioned as "a colony settled within "the bounds of the province of *South Carolina*," and the governor of that province is instructed to register the charter among its records*.

"That after the establishment of Georgia, the lands south of its southern boundary still remained, and were considered by the crown as being, under the jurisdiction of South Carolina, and of consequence a part of that province.

"It appears by a representation from the governor of Georgia, dated October 17th, 1761, that there was then, and long had been, a military post kept up on Cumberland island, far *south* of *the Altamaha*, "under the direction and authority of the governor "of *South Carolina*†." The governor of *South Carolina* too, in a letter to the board of trade dated August 17th, 1763, affirms that there was then, and had been for many years, a post to the southward of the Altamaha garrisoned by detachments from that province‡. But this point is more strongly confirmed by the proceedings which took place with respect to certain lands lying south of the Altamaha, and *granted* by the *governor* of *South Carolina* in the year 1762. These grants being complained of by the governor of Georgia, the board of trade and plantations reproved the governor of South Carolina for making them; not on the ground of his possessing no jurisdiction, but because "the mak-

* Att. gen. rep. 95. † Ibid. 111. ‡ Ibid. 118.

" ing of grants for lands in that country was con-
" trary to the intention of the crown, and might
" not only embarrass the execution of those ar-
" rangements which would probably become ne-
" cessary from the concession of Florida, but in-
" terfere also with the measures about to be taken
" for the extension of Georgia*." The governor justified his conduct by alleging, that his province still extended as far south as the limits fixed by the charter of Carolina to the lords proprietors, except as to such land as had been expressly included within the charter of Georgia†. In a subsequent representation from the board of trade to the crown, they seem to admit that " these grants were made " conformably to the governor's instructions‡." And they expressly recommend, that an act of the Georgia legislature, passed after that province had been extended to the St. Mary's, and tending to subject the grantees of those lands to improper conditions, should not receive the royal assent‖. Transcripts of those grants were afterwards ordered by the crown to be registered in Georgia§. And the grants themselves, thus virtually confirmed, have ever since been, and still are, considered as valid.

" All these proceedings must have been founded on the principle, that " the lands south of the south-
" ern boundary of Georgia, as first established by
" its charter, continued to be a part of *South Caro-*
" *lina*, till the proclamation of 1763 annexed them,

* Att. gen. rep. 115. † Ibid. 117. ‡ Ibid. 144. ‖ Ibid. 141. § Ibid. 144.

"or a part of them at least, to the former pro-
"vince."*

Georgia, relying on these facts as full evidence of her title, in the year 1783 passed an act proclaiming her title to the property, and in 1785 proceeded to establish the county of Bourbon. In 1787 she offered to sell a part of it to congress for one hundred seventy one thousand, eight hundred and twenty four dollars. In 1789 she actually made a conditional sale to three companies for something more than two hundred thousand dollars; and in 1795, for the consideration of five hundred thousand dollars, made the grants from which have arisen the various contests now maintained in relation to this property.

The title of Georgia has, by successive acts of the United States, ever, until after the year 1797, been admitted, recognised and maintained.

The following instances are given:

1st. Congress, September 6th, 1780, requested the states to cede a liberal portion of their vacant lands....*Journ. Cong. Vol. 6th.* 123.

2d. On the first of June, 1785, the state of South Carolina petitioned Congress, stating that a dispute and difference had arisen between that state and Georgia concerning boundaries; the said states respectively claiming the same territories: in particular, that South Carolina claimed the lands "lying

* Here considerations of a public nature have induced us to omit one document which might tend to affect the original right of Georgia to a part of the land; but it can have no bearing in relation to the title of the claimants derived from such considerations as will be hereafter suggested.

" between the line of North Carolina and a line to " be run due west from the mouth of the Tugaloe " river to the Mississippi; because the river Savan- " nah loses its name at the mouth of Tugaloe". That she also claimed " all the lands lying between " a line to be drawn from the head of the St. Mary, " the head of the Altamaha, the Mississippi, and " Florida", which last mentioned tract of land was also claimed by Georgia; and praying for a determination by congress, who assigned the 8th of May, 1786, for the appearance of said states of South Carolina and Georgia, and to proceed in the premises, &c....*Journ. Cong.* 10*th vol.* 134....5.

3d. August 9th, 1786, congress again requested the states of North Carolina, South Carolina and Georgia to make liberal cessions of their vacant lands to the United States....*Journ. Cong.* 11*th vol.* 131.

4th. The agents of Georgia, September 13, 1786, represented to congress that the state of South Carolina, on the 22d March, 1786, invested three commissioners with full and complete power, on her part, to compromise all her aforesaid differences with the state of Georgia; and that there had not been a reasonable time for Georgia to decide on the proposition to fix their boundaries, &c. On the same day a court was established to decide between these states....*Journ. Cong.* 11*th vol.* 158....159.

This court was ordered to hold its session on the first Monday of June, 1787....*Journ. Cong.* 11*th vol.* 160.

5th. South Carolina and Georgia came to an amicable adjustment of all their differences on the 28th day of April, 1787. By this adjustment, all the lands lying north of a line drawn due west from the head of the most northerly branch of the Tugaloe to the Mississippi, were, by Georgia, yielded to South Carolina; and "*all the lands claimed by said* "*state of South Carolina, lying eastward, southward,* "*south eastward, and westward of a line drawn* "*from the head of the most northerly branch of the* "*Tugaloe west to the Mississippi*", were ceded by the state of South Carolina to the state of Georgia. ....*Journ. Cong. vol.* 12*th.* 89....90.

6th. This treaty of settlement was, by the delegates of South Carolina, laid before congress, August 9th, 1787, and a motion made that the same be ratified and confirmed, and that the lines and limits therein specified, shall be hereafter taken and received as the boundaries between the states of South Carolina and Georgia forever.

Which motion was committed by the unanimous vote of every state in congress.....*Journ. Cong.* 12*th vol.* 91.

This is justly to be considered as an assent to and ratification of the terms of said settlement, as the records evince no further proceeding on the question: and as,

7th. On the same day the delegates from South Carolina, in behalf of said state, ceded to the United States "all right, title and claim, as well of soil as "jurisdiction," which said state had "to the terri- "tory or tract of country within the *limits of the*

" *charter of South Carolina*, situate, lying and being " within the boundaries and lines hereafter describ- " ed:....That is to say, all the territory or tract of " country included within the river Mississippi and " a line beginning at that part of the said river which " is intersected by the southern boundary line of " the state of North Carolina, and continuing along " the said boundary line until it intersects the ridge " or chain of mountains which divides the eastern " from the western waters; then to be continued " along the top of the said ridge of mountains, until " it intersects a line to be drawn due west from the " head of the southern branch of Tugaloe river to " the said mountains; and thence to run a due west " course to the Mississippi"; which cession was accepted by the United States.... *Journ. Cong.* 12*th vol.* 92.

8th. On the 27th October, 1787, the *same congress* once more requested *Georgia* to cede a portion of their vacant territory to the union, " *to justify the* " *confidence which has been placed in her*".

9th. Georgia, by her act of the first of February, 1788, authorised her delegates in congress to convey to the United States a portion of her vacant lands; " Beginning at the middle of the river Apa- " lachicola, where it is intersected by the 31st de- " gree of north latitude, and from thence due north " 140 British statute miles; thence due west to the " middle of the river Mississippi; thence down the " said river to where it intersects the 31st degree of " north latitude, and thence along the said degree " to the place of beginning", upon condition that

the United States shall guarantee to the citizens who may settle in said country a republican government.

2. The navigation of the waters to remain free &c.

3. That the sum of 171,428 dollars and 45 90ths, expended by Georgia in Indian wars, shall be allowed by the United States in payment of specie requisitions against that state.

4. The United States to defend Georgia, according to the articles of the confederation.

5. That congress shall guarantee to Georgia her remaining territory, as pointed out in her act of 17th of February, 1783, and the convention between South Carolina and Georgia of the 28th of August, 1787.....*Journ. Cong.* 13*th vol.* 49....50.

The lands by this act proposed to be ceded, are the lands now claimed by our company.

10th. This cession of Georgia was not accepted by congress for the following reasons:....

1. Because Georgia retained a large tract of country between the lands ceded by South Carolina and those of her proposed cession; "*and therefore* "*the lands proposed must be too far removed from* "*any* OTHER *lands hitherto ceded to the union, to be* "*of any immediate advantage to it.*"

2. Because there was but a small part of the sum due in specie requisitions, &c.

3. "Because the fifth condition contains a spe- "cial guarantee of territorial rights, and such a "guarantee as has not been made by congress to "any state; and which, considering the spirit and

" meaning of the confederation, must be UNNE-
" CESSARY and *improper.*"

But congress then resolved, that they would from Georgia accept a cession of all her lands lying west of a meridian line running through the centre of the Apalachicola, at the point where that river intersects the 31st deg. of north latitude, and allow her therefor the aforesaid sum of 171,428 dollars and 45 90ths, which should be applied in payment of part specie requisitions, and the residue to be credited her on account with the United States.....*July* 15, 1788, *Journ. Cong. vol.* 13*th.* 50.

So far we have proceeded in stating the admission of the title of Georgia, on the part of congress, in a succession of public acts with the states of Georgia and South Carolina; in each of which acts the ownership came into immediate consideration, and the right of soil constituted the main or principal question.

Let us now examine what language the United States has held to other nations in relation to this same property. Let us ascertain on what ground she has claimed it as a constituent part of the union. Whether as possessing in herself the rights of soil and territorial sovereignty, or as belonging to and constituting a part of the state of Georgia, and so within the general jurisdiction of the United States.

Seven years after South Carolina ceded this territory to the state of Georgia, and five years after congress offered to pay Georgia 171,428 dollars for a cession of it; which offer was preceded by repeat-

ed requests for a cession within the space of thirteen years antecedently to the act of which we are about to speak, Thomas Jefferson, esq. then secretary of state, in a report to the executive, intended to serve as a basis of instructions to our commissioners for settling the points in dispute with Spain, expresses himself in these words:

"As to boundary, that between *Georgia* and West "Florida is the only one which needs any explana- "tion. It (that is, the court of Spain) sets up a "claim to possessions *within the state of Georgia*, "founded on her (Spain) having rescued them by "force from the British during the late war. *The "following view of that subject seems to admit of no "reply.*

"The several states now composing the United "States of America, were, from their first esta- "blishment, separate and distinct societies depend- "ent on no other society of men whatever.

"They continued at the head of their respective "governments the executive magistrate who pre- "sided over the one they had left; and thereby se- "cured, in effect, a constant amity with the nation. "In this stage of their government, *their several "boundaries were* FIXED, *and particularly the south- "ern boundary of Georgia, the only one now in ques- "tion, was* ESTABLISHED *at the* THIRTY FIRST "DEGREE of *latitude from the Apalachicola* WEST- "WARDLY.

"The southern limits of Georgia depend chiefly "on 1st. The charter of South Carolina, &c. 2d. "On the proclamation of the British king in 1763,

" establishing the boundary between Georgia and " Florida, to begin on the Mississippi in 31 de- " grees north latitude, and running eastwardly to " the Apalachicola," &c.

Here is from the highest authority a full and complete admission of the title of Georgia. " Her " southern boundary was established in the 31st. " deg. of north latitude to begin on the Mississippi " and run eastwardly". " It (Spain) sets up a " claim to *possessions within the state of Georgia*". It is not only an admission of the title, it is an act of the government itself, maintaining and defending, as she was bound to do, the rights and interests of that state. And it is worthy of remark that this official act of Mr. Jefferson, in which the rights of Georgia are so strongly maintained, was near four years after it was known to the government that the state of Georgia, by the public act of her legislature, had on certain conditions (which it is averred were never performed) granted to three companies the right of buying, within two years, certain parts of this vacant territory, at the price of 207,580 dollars.....*See Comrs. Rept. Feb.* 1803, *p.* 11*th.*

In defence of these rights of Georgia, who alone claimed and was intitled to the rights of soil and local jurisdiction, and in maintenance of the general jurisdiction of the United States, the commissioners of the United States, in their representation to the court of Spain, who claimed a part of the country, made on the 7th of December, 1793,

while contending for the rights of Georgia as agents of this nation, express themselves in this manner:

" In this stage of their government the several " boundaries were fixed, and particularly *the south-* " *ern boundary of Georgia*, *the one* now brought into " question by Spain". *(Mark, the southern boundary of Georgia, not the southern boundary of the United States, was brought into question by Spain.)*

" This boundary was fixed by the proclamation " of the king of Great Britain, their chief magi- " strate, in the year 1763; at a time when no other " power pretended any claim whatever to any part " of the country through which it run. The boun- " dary of Georgia was thus established: to begin " in the Mississippi in latitude 31 north, and run- " ning eastward to the Apalachicola, &c. From " what has been said, it results, 1st. that the boun- " dary of Georgia, now *forming the southern limits* " *of the United States*, was lawfully established in " the year 1763. 2d. That it has since been con- " firmed by the ONLY POWER who could at any " time have pretensions to contest it." The last sentence has a clear reference to the treaty of peace concluded between the United States and Great Britain in 1782.

Here again the title of Georgia is ably maintained and defended.

" The southern boundary of *Georgia*, brough " into question by Spain", " was established in " 1763", " to begin in the Mississippi in latitude " 31 north, and running eastward, &c." " forming " the *southern limits* of the United States"; and

" has since been confirmed (by the treaty of peace)
" by the ONLY POWER who could at any time
" have pretensions to contest it."

Subsequent to this period, on the 7th day of January, 1795, the persons, under whom the New England Mississippi Land Company claim to hold the lands in controversy, effected their purchase of the state of Georgia.

Spain, then, had not relinquished her pretensions to the country.

On the 10th of August, 1795, (six months after the purchase, and at the time when the members of the New England Company were negotiating for the property) Thomas Pinckney, esq. minister plenipotentiary of the United States at the court of Spain, in a communication to the prince of peace, on this subject, makes use of the following expressions:

" Thirty two years have elapsed (referring to the
" proclamation of 1763) since all the country on
" the left or eastern bank of the Mississippi, being
" under the legitimate jurisdiction of the king of
" England, that sovereign thought proper to regu-
" late with precision the limits of *Georgia* and the
" *Two Floridas*, which was done by his solemn
" proclamation, published in the usual form; by
" which he established between them precisely the
" *same limits* that near 20 years after he declared
" to be *the southern limits of the United States*, by
" the treaty which this same king of England con-
" cluded with them in the month of Nov. 1782."

Here, likewise, the same boundary is assigned to Georgia; that is "*The southern limits of the United States*".

On that principle alone did Spain, in the treaty of October, 1795, relinquish her claim to the country.

There is, on the part of the United States, one further admission of the right of Georgia, so clear and certain, so conclusive and irresistible, that it cannot be omitted or overlooked on this occasion. We mean the agreement entered into between the United States and Georgia, on the 24th day of April, A. D. 1802. By this agreement, the United States covenanted to pay Georgia, for a cession of the territories in controversy, 1,250,000 dollars, out of the first nett proceeds of the sales of these lands.....*See the documents presented December* 15, 1802.

It is difficult to resist the following questions:

Did the United States own this territory, and yet in 1780, 1786 and 1787, request Georgia to cede it?

Did congress, in 1786, constitute a tribunal to settle a controversy between South Carolina and Georgia, respecting property which belonged to neither, but to the United States?

Can there be a pretence that congress were ignorant of the rights of the nation?

Were they uninformed of the points in dispute between these states, when the memorial of South Carolina, specificating the same and her claims, were before them?

Was not their attention again called to the territory by the convention of those states, in which the rights of soil and jurisdiction were ceded to Georgia; which convention was recorded on their journals? The fact must be admitted: still no claim was made in behalf of the United States. But the cession of South Carolina was accepted, and Georgia was immediately solicited for a cession, "to justify the confidence which had been "placed in her."

If congress acquired any territory adjoining Georgia, by the treaty of peace, how could that honorable body refuse to accept the proposed cession of Georgia, because "the lands were too far "removed from any other lands hitherto ceded to "the union, to be of any immediate advantage to "it"?

If the title of Georgia was not clear and certain, how could congress resolve that the guarantee required by Georgia, "considering the spirit and "meaning of the confederation, must be *unneces-* "*sary*"?

Or why, at a time when for want of revenue the credit of the nation was sunk to nothing, did they offer to give Georgia 171,428 dollars, for what (as is now contended) the nation owned before?

If it be said that the feeble and ill-tuned powers of the old government compelled congress to petition for and purchase even the national property, it may be asked, did the new government assert these rights?.....Certainly not.

She asserted the rights of Georgia, and of Georgia alone. She averred the title of Georgia was so clear, that the arguments adduced in her favor, " seemed to admit of no reply"; that " her line " formed the southern limits of the United States", and " was confirmed by the only power who at " any time had pretensions to contest it".

Will any man say these assertions were unfounded?

Will any man believe, that for sixteen years in succession, the title of Georgia, under the old and present government, was not only admitted by all persons intrusted with the management of our national concerns, but was by them invariably maintained and defended, and declared to be *in itself* so free from doubt as to make a guarantee *unnecessary*, and that this title is now to be held invalid? Even now, after the lapse of so many years....after so many recognitions of its validity, by the executive and legislative branches of the government,....after it has been transferred to a vast number of innocent citizens, at the expense of their whole fortunes? Will he say more, that this solemn and portentous decision of its invalidity shall be pronounced by the very branches of the government, who have so frequently proclaimed its validity? Shall this awful decree, which destroys the last hopes and prospects of an immense body of the citizens, be pronounced without calling in aid the national judiciary, who alone have not sanctioned the title, and to whom the unfortunate sufferers loudly appeal?

If any such man exists, let him give a satisfactory answer to this further question: Why did the United States, on the 24th of April, 1802, covenant to pay Georgia 1,250,000 dollars for property which previously belonged to the United States?

Admitting the United States originally had good title to these lands, and that Georgia never had a valid title thereto, yet it is believed that under the circumstances, and according to the well known principles of law and chancery, this title cannot be set up in opposition to the rights of innocent purchasers, for valuable consideration.

It is an established rule of law, that whoever knowingly and without constraint, acquiesces in the disposition of his property, for a valuable consideration, by any person who claimed and appeared to have right, shall be bound by such disposition. The maxim is " that silence implies con-" sent; and that he who does not forbid an act when " he has a right, and an opportunity to do it, orders " it."....1*st Equity Cases*, 356....1*st. Vezie*, 6 *and* 96....1*st. Pier Williams*, 393....3*d. Pier Williams*, 280....2*d. Vernon*, 150, 239, 726.

On this principle a prior mortgagee, by witnessing a subsequent mortgage, without giving notice of his claim, is presumed to assent that his claim shall be postponed, and the second mortgagee is accordingly preferred.

So, if the first lessee witness a second lease, and does not disclose his claim, the second lessee will be preferred at law....*Powel on Contracts*, 132.

So where a mother to whom a term was limited in tail, stood by at her son's marriage treaty, and heard him declare the estate was to come to him after her death, and did not mention she had more than a life estate, it was decreed the mother should make good the terms of the marriage settlement, notwithstanding she plead ignorance of her title, and that she was no party to the settlement, nor concerned in it.....*Powel on Contracts*, 133....2*d. Vernon*, 150, *Hunsden's case*....1*st. Equity Case*, *al.* 355.

In such cases assent is presumed even against an infant, *for it is meant to protect an innocent man who is drawn in to advance his money*.....*See Powel on Contracts*, 134.

These cases go upon the principle, that the person who had the right, had notice or knowledge of the subject matter of the contract, and made no claim.....1*st. Vezie*, 6*th*....*Brown's Chan. Ca.* 357.

On the same principle it has been decided, in Virginia, that where one of two innocent persons must suffer by the act of a *third*, he who hath enabled such third person to occasion the loss, must sustain it....*Judge Washington's Repts.* 2*d.* 245.

We desist, although innumerable other precedents might be extracted from the various treatises on law; all tending to support the same principle ....a principal bottomed in truth, reason, and justice.

It will not be pretended that the case under consideration is, in all its parts, similar to either of the cases cited. But it is believed that the principle

which governed in those cases is strictly applicable to, and will govern in the decision of, this case.

The only use of the reporter is, to transmit to posterity the principles upon which the tribunals of justice found their decrees; for instruction to those who succeed them, and to render the rights of the citizen secure and certain.

The rule is, " that whoever knowingly and with- " out restraint acquiesces in the disposition of his " property, for a valuable consideration, by any " person who claimed and appeared to have the " right, shall be bound by such disposition."

The reason of the rule is, " to save an innocent " man who has been drawn in to advance his mo- " ney".

Apply this rule to the present case.

1st. Georgia *claimed* to own these lands, as appears by her act of February 17th, 1783, and by every other act relative to the same subject.

2d. She *appeared* to own them, as is proved by her exercising the powers of government; by establishing the county of Bourbon; by appointing commissioners to examine the quantity, quality and situation of the land at the great bend of the Tennessee; and by the great variety of other facts heretofore stated.

3d. *She disposed of them to persons who believed she had good title, for valuable consideration;* and the property is now claimed and held by innocent persons, who confided in her title, who purchased for full consideration, and with good faith.

4th. The United States were free from *restraint;* they *knew* of her conditional proposals of sale to congress in the year 1787, *and not only acquiesced but offered to buy* with some variation in the terms, though none in the price: they were free from constraint; *they knew* of her conditional sale to the Virginia and South Carolina Yazoo companies, *but they remained silent, and once more acquiesced.*

The consequence is, the right is vested in the innocent purchaser. The United States are bound by the sale, under these circumstances, in the language of the law, " to save innocent men who have " been drawn in to advance their money."

But the argument goes further. The United States did not simply *acquiesce* in the claim asserted by Georgia, and the disposition she made of the property; they publicly *admitted* her right by repeatedly soliciting a cession of it; by offering to purchase it at 171,428 dollars; by maintaining and vindicating it against the claims and pretensions of the Spanish government; and, lastly, by the convention of April, 1802.

Surely if an innocent purchaser is protected against one, who only acquiesces, by not declaring his title; he will, for reasons infinitely stronger, be protected against the claims of one, who openly, on every occasion, for twelve years, *proclaimed and maintained the title of the vendor.*

In the second place....

IT IS SAID TO BE AGAINST THE POLICY OF THE NATION TO ALLOW OF SUCH EXTENSIVE GRANTS.

From what quarter of the country comes this declaration? From one where plantations are measured by miles, and acres told by thousands; and against a part of the country where farms are limited to fifty or a hundred acres and measured by feet and inches. From one, where in many cases the expenses of a single family consume the product of as many acres as furnish sustenance for a regiment of freemen in that part of the country against which the alarm is excited.

Is it true that the sales of extensive tracts of territory are injurious to the interests of the nation? Let a just comparison between the settlements conducted by large land-holders, and those which are made spontaneously, according to the fancy of each individual adventurer, decide this question. New-York has been settled under the patronage of land-holders. In what part of the nation have the yeomanry in as few years risen to the same respectability for numbers and wealth, and to the enjoyment of an equal proportion of the conveniences and blessings of life? In Pennsylvania a complex system existed which to be sure has produced embarrassments; equally pernicious and distressing to the settler and the land-holder.

When a land-holder commences a settlement, his interest consists in rendering his settlers com-

fortable, prosperous and happy: to do this they are furnished with convenient roads, mills, mechanics, &c.

The settlement is condensed by the effort of the proprietor, and in a little time there is formed a thriving and happy neighbourhood. These conveniences furnish to a settler an equivalent for the difference in price.

But admit the impolicy of the measure. From what quarter did it originate? Who first made to their citizens extensive grants of vacant territory? The congress of the United States and most of the states have followed this example. Those of Virginia, Massachusetts, New-York, Pennsylvania and Connecticut are distinguished for the extent of their grants.

Whatever is not forbidden by law, is permitted; and whatever is permitted, is lawful. After so many examples shall our rights be taken from us on the principle of policy? Why have the guardians of this policy slept so long? Why among the thousand instances which have occurred should we be singled out for the sacrifice?

The third objection is....

THAT THE CONSTITUTION OF GEORGIA DID NOT INVEST THE LEGISLATURE OF THAT STATE WITH POWER TO SELL THEIR VACANT LANDS, PARTICULARLY BEFORE THE SAME WERE LAID OFF INTO COUNTIES; AND THAT CONSEQUENTLY THE LEGISLATURE HAD NO RIGHT TO MAKE ANY SALE, AND SO THE ACT OF 1795 WAS VOID AND VESTED NO RIGHT IN THE PURCHASERS, OR THOSE WHO HOLD UNDER THEM.

This objection, if well founded, will certainly put an end to our title so far as relates to more than three fourths of the land claimed by our company.

But it is reasonable to inquire into the principles on which it is contended this decision is to be pronounced.

It is true that the constitution of Georgia did not, by any express provision, authorise the legislature to make sale of the vacant territory. It is as true that no state legislature in the union is, by express provision, authorised to make sale of their lands. All the state constitutions in United America are silent on the subject. Their powers all rest on the same foundation. Their constitutions must all receive the same construction. Every state has made sales; yet no state, on this subject, had clearer, or higher authority than the state of Georgia. If this power be denied to Georgia, it must be denied to *every state*. If it be admitted to one state, it must be admitted to all.

No casuist can discover the least possible difference.

Either the legislature of Georgia had power to sell, or every sale made by congress before the fourth of March, 1789, and by the several states since their independence, is void in law.

This, therefore, is not a question in which our rights alone are involved.

It involves the rights of most of the citizens of Kentucky, Tennessee, Ohio, Vermont and Maine; and of a proportion in New-York, Pennsylvania, Virginia, North and South Carolina, and Georgia.

It calls in question the titles of more than one million of people, and of more than one third of the cultivated soil in the nation.

Fortunately there is reason to believe the objection is not well founded.

It arises from not adverting to the just and well known distinction between *the states*, and *the citizens of the states*.

The vacant territories belonging to the *states*, *not to the individual citizens of the states*.

The states, of consequence, have a right to sell and dispose of them. These sales ought certainly, in the language of the constitution of Georgia, (1789) to be on such terms as the *legislature shall deem* "proper for the good of the state."

This principle was ever maintained anterior to the revolution. The unseated lands belonged to the crown, or the colony, not to the individual citizens; and were granted accordingly.

It was again recognized in the articles of confederation, and in the constitution of the United States, in these words: "Nothing in this constitu- "tion shall be so construed as to prejudice any "claims of the United States or of any *state*." ....*Art. 4th. sect. 3d.*

On the same principle congress, under the confederation, requested from the *states* cessions of a part of their vacant territory; and *five* of the *states* made cessions.

The sales made by congress of half a million of acres near Presque Isle; of a million of acres at and near Cincinnati; of a vast tract including Marietta, and all their other sales, prior to the present constitution, rest on the same foundation.

When in addition to these precedents, we bring, in support of the rightful authority of the state of Georgia, as other precedents, every sale made by any other state in the union, will there be left a reasonable doubt of the legitimacy of that authority?

One consideration ought forever on this subject to silence Georgia. It is, that she claimed the territory under the cession of South Carolina of the 28th of April, 1787, in pursuance of an act passed by the *legislature* of that *state*. Georgia must either admit the power of her legislature to grant, or the want of power in the legislature of South Carolina; in which case the lands now belong to the people of the latter state.

It is left to the advocates of the contrary doctrine to reconcile that part of the preamble of the act of

1796, which denies the power of the legislature of Georgia, with the part which claims title to the property under the act of the legislature of South Carolina.

If a doubt remains, take precedents from Georgia herself. Ascertain the correct and invariable opinion of her several legislatures, before any unhappy misunderstanding existed.

In 1787 the *legislature of Georgia* offered to sell a part of her vacant lands to congress for 171,428 dollars; and congress offered to buy of the *state* of Georgia all her vacant lands at that price.

The legislature of that state in 1789 contracted with certain companies to sell, for the consideration of more than 200,000 dollars, certain parts of her lands.

A thousand other minor sales and grants have been made. Was there ever a doubt existed in the mind of any person respecting the authority of the legislature? Did not those, who now deny the existence of the authority, at the several periods approve of these acts, and thereby maintain the existence of that very authority? To adopt the contrary doctrine, and carry it into full effect, would be attended with serious consequences.

It would, as before stated, destroy the validity of every public grant or sale made since the revolution, excepting those since 1789 made under the laws of congress.

It would retard the progress and prosperity of the states. Instead of blooming farms and plea-

sant villages, the wilderness would remain a haunt for the beasts of the forest.

For admit the principle that the vacant lands belong to the individual citizens, and it is not possible, consistent with right, to authorise any power to make sale of them. The majority who approve of a constitution have no just power to compel the minority to surrender or dispose of their rights of soil. They cannot rightfully decree a community of property.

Independent of this reasoning the constitution of Georgia, adopted in May 1789, appears clearly to invest the legislature with this power. Among other things it is decreed, that "The general assembly shall have power to make all laws and ordinances which *they shall deem* necessary and proper for the good of the state; which shall not be repugnant to this constitution."

Here a general power is given limited only by the constitution; and nothing in that constitution restricted the legislature from making these grants. The first legislature under this constitution gave it a contemporaneous construction, by their conditional sale to the Virginia and South Carolina Yazoo companies.

But it is said that the power of the legislature was limited to selling lands previously incorporated into counties, by that article of the constitution, which authorises the formation of new counties in the vacant territories.

How granting this power operates as a limitation of any other power, is wholly beyond our comprehension.

We have assiduously examined for the foundation of this argument, but have not been so successful as to make the discovery. The introduction of this article originated in abundant caution. It does not increase or vary the powers of the legislature.

The erection of a county, like the establishment of a borough or other incorporation, is a mere municipal regulation, and the power incident to the sovereignty or legislature. It has been invariably so considered in all civilized countries, and particularly in the United States. Nothing is more frequent than the formation of new counties, and nothing more rare than to discover any express delegation of power for that purpose.

If any inference can be drawn from the express delegation of this power, it certainly will be in favor of the general powers of the legislature. The sales must precede the settlement, and the settlement the organization of the county. Or for what purpose is it to be organized? Who are to be its judges, its grand or traverse jury, its sheriff or representative? and by whom are they to be chosen?

Even should a want of authority in the legislature be inferred from this clause of the constitution, its effect upon *our* claim is only partial. All that part of it which had been previously designated by the name of the county of Bourbon, is free from the objection. As it relates to that part, this argument appears to concede the power to grant, and consequently our right.

In the fourth place it is objected....

THAT AN AFTER LEGISLATURE OF GEORGIA, IN THE YEAR 1796, INQUIRED INTO THE GRANTING ACT OF 1795; AND UPON INVESTIGATION, FOUND THE SAME UNCONSTITUTIONAL AND OBTAINED BY FRAUD; AND PROCEEDED TO DECLARE IT NULL AND VOID, AND TO VACATE ALL TITLES DERIVED THEREFROM. BY THE SAME ACT THEY AUTHORISED THE REFUNDING OF ALL THE MONEY DERIVED FROM THE SALES OF 1795, WHICH WAS THEN IN THE TREASURY.

Before we enter into the consideration of this act, to a clear understanding of the subject, it is necessary to state.....

1st. That this act was subsequent to the grant made to the New England Mississippi Land Company, and to the payments made by them for the property....*See the deed registered in the secretary's office.*

2d. That no part of the money which was paid into the treasury, by the Georgia Mississippi Company, for the lands we claim, has ever been withdrawn from that treasury; except some small sums for citizens' rights. This appears from the commissioners' report of February 10th, 1803.

3d. That the state of Georgia had expended 100,000 dollars of the monies paid for the lands; 50,000 dollars in the purchase of six per cent. stock; 30,000 dollars in Indian treaties, and 20,000 dol-

lars in discharge of claims against the state.....*See Gov. Mathews' speech of Jan.* 28, 1796.

4th. That no provision has ever been made by any act of the legislature of Georgia, to refund the 50,000 dollars expended on the civil list and Indian treaties: but the state has withheld the same beyond the controul of the claimants.

5th. That most of the persons who have withdrawn monies from the treasury, had previous to the act of 1796, granted their right and title to the lands, for a full consideration, to innocent purchasers, who had no knowledge of the original transaction, except what was derived from the records and public acts of Georgia and her chief magistrate.

Our claim, therefore, is clear of any difficulties which might arise from any notice of the supposed fraud, given by the act of 1796; or from the original grantees withdrawing the purchase money from the treasury.

We proceed to an examination of the act of 1796, and its legal effects.

This act declares the act of 1795, void and of no effect. The preamble among other things assigns two reasons which deserve notice....

1. That the legislature of 1795 had no constitutional authority to make the grants.

2. That the legislature was corrupted, and the grants obtained by fraud.

The first objection has been fully considered, and we trust we have satisfactorily shewn the authority of the legislature.

The second will hereafter form a distinct subject for consideration.

At present, the annulling act of 1796 appears to merit our principal attention.

We are justified in questioning the authority of the legislature to pass this act, by the constitution, and by the precedent given in questioning the authority of the legislature of 1795. The authority of each legislature is equally liable to be questioned.

We approach this part of the case with peculiar regret, in consequence of our attachments to the distinguished persons who were its advocates; and because we know that persons clothed with authority, do not relish those truths which prove that this authority has been exercised beyond the powers vested.

The legislature, in passing the annulling act, must have acted either in the character of a party to the contracts made under the law of 1795, or as a judicial tribunal, or in their common capacity as a legislature.

In whichever of these characters they acted, it will be shewn in the sequel, it is believed, that their annulling and declaratory act, is of itself void in law.

Let us consider them in these three distinct characters.

1st. Acting as a party to the contracts: and this appears to be the true light in which to consider that legislature. In this case it is clear they had no authority to decide upon the validity of the contracts. No man has a right to be a judge in his

own case. It is against reason and justice to allow this privilege; and it is equally against justice whether the party is an individual, a collection of individuals, a prince, potentate or any other power. Right is derived from principle, not from numbers or strength. The law shelters the humblest citizen from a violation of his rights even by the government of the nation. It is for this that the people have enacted *their law* called *the constitution*. This constitution is not only a guide to the existing powers; but, to the citizen, it is a bulwark and a defence. The great principle here contended for is held so sacred, that even "when government is "annihilated, social rights and obligations retain "their force"....*Tucker's Blac. vol.* 1. *app.* 6. *p.* 11. "And the right of holding land by deed is a so- "cial right"....*Tucker*, 145.

In this character it must be admitted they had no right to annul the act and declare the contracts void. Should any one maintain the contrary doctrine, the question is forever put to rest by this consideration; that the very party who claimed, and attempted to execute, the unheard of right of annulling their own contracts, at the same time retained 50,000 dollars, part of the consideration on which these contracts were founded. The language of it is...." *You shall surrender to me all the* " *property I transferred to you, and I will retain of* " *the monies you paid for that property* 50,000 *dol-* " *lars for my use.*" Is this the language of justice? or is it the language of power? In what code is this

law written? Or, if admitted, what are our boasted rights and privileges?

2d. Acting as a judicial tribunal.

Here again their advocates have not less difficulties to encounter. Montesquieu says, " where the " power of making laws and the power of executing " them are united in the same body of magistrates, " there can be no liberty". Again, " There is no " liberty if the power of judging be not separated " from the legislative and executive powers". It is a principle in all our governments that the legislative and judicial powers shall be kept separate and distinct; so that one shall not interfere with what properly belongs to another. This is the well known distinction between these powers. The *legislature enacts* the law; the *judiciary expounds it*, and applies it to individual cases. The *latter* declares what the law *is*; the *former* what the law *shall* be in *future*. This separation of powers is carefully secured in the national constitution; and the constitution of Georgia expressly provides, that " The legislative, executive and judiciary de- " partments shall be separate and distinct; so that " neither shall exercise the powers properly be- " longing to the other."

" *And the trial by jury to remain inviolate for-* " *ever.*"

No language could more distinctly mark the separation of these powers; or more clearly prohibit the legislature the right of acting as a judicial tribunal. This doctrine has been sanctioned by the legislature of Georgia on the petition of Alex-

ander Forrester, praying the legislature to give a construction of one of their acts, which is a case precisely in point. The decision was unanimous in the senate, and nearly so in the house of representatives. It is in these words: "On the petition "of Alexander Forrester, resolved, that the senate "do not feel themselves warranted in giving an "opinion on the construction of a law *as it involves* "*a judicial question*".....*Journals*, *Nov.* 19, 1794.

The same principle is maintained in these words, in the preamble of an act passed by the legislature of Virginia, in October, 1787, ch. 36, concerning monies carried into the public loan office in payment of British debts.

"*It belongs not to the legislature to decide par-* "*ticular questions of which the judiciary have cog-* "*nizance.*"

But, were the principle admitted that the legislature could act in a judicial capacity in any case; in the one under consideration they certainly could not. *They were parties, not judges.*

Even if this difficulty be surmounted, another arises which is insurmountable. Their proceedings were exparte. The persons, whose rights were to be effected, were not called before them. They had no day in court: they were not permitted to cross-examine a witness brought against them; nor to produce one in their favor; nor a single argument in support of their rights. The decision, therefore, must be considered a nullity on every principle of law and natural justice.

Lastly, Acting in the common capacity of a legislature.

The acts of a legislature are of various kinds. Some are public acts for the government of all the citizens. These apply equally and alike to the whole commonwealth. In these the commonwealth is the only party. They may properly be termed *laws*. These may, by any legislature, be repealed or modified and varied at any time and in such manner as the legislature may deem proper. Others are of a very different nature. Among them are contracts, pacts and agreements entered into for certain purposes. The agreement and covenant entered into between Virginia and Maryland for the free navigation of the Chesapeake; between Pennsylvania and Virginia relative to their several jurisdictions and boundaries; and between South Carolina and Georgia in relation to the lands in question, are of this description. Here there are *two parties*. Reciprocal rights are acquired, and vested. It takes two parties to make a contract; when made, it cannot rightfully be rescinded by one party. In the examples given, the acts of the several legislatures are not, strictly speaking, laws, though commonly so denominated. They are contracts and agreements; and no further laws than as they govern the parties. These acts, commonly called laws, cannot, from the nature of things, be annulled, abrogated or repealed. They are not subject to the discretion of any after legislature. Of the same kind are, all loans of money, purchases of military stores, or other property, grants of

privileges for public benefit, as toll for a bridge, road or the like; grants of lands, or any other grant whereby any individual or number of individuals is vested with a particular right. In all these cases the legislative acts are contracts, not laws. In each case there are two parties. The act cannot be annulled, repealed or in the least altered, without the assent of both these parties. In each case, the act is law for the government of the parties, not for the government of the state or body politic. Nor is the right increased or diminished by the weakness of the one, or the power of the other party. Certain it is, that these acts cannot be infringed, repealed or annulled, without an infringement of every principle of law; without an annihilation of every principle of civil liberty. These acts may be divided into two classes, executory and executed. The executory, are those where the emolument to one party is to be derived in part, or in whole, in future; like the case where the bridge builder, or the road maker, has vested in him the daily right, of exacting a toll for a number of years, or in perpetuity. The executed, are those where the rights are not only vested, but in fact the thing stipulated for is granted, and in contemplation of law actually in the possession of the grantee; like the case of a salary provided by law, and received by the officer; or where a farmer in Ohio has purchased of the United States a farm, and received his patent. In these cases the act cannot be repealed for two reasons: 1st, Because there is a right acquired by the act, and vested in another party. 2dly, Be-

cause the thing contracted for is actually transferred, and the possession vested in the grantee. The act is executed. It has had its full and entire effect. It is dead to every legal intent and purpose; save only this....it remains as a muniment of the rights of the grantee. Will it be pretended that in either of the cases stated, an after legislature can repeal or rescind the grant? Can Maryland be deprived of the free navigation of the Chesapeake? Can South Carolina rescind her act of 1787, and claim the lands in dispute? Can the toll be taken from the bridge or turnpike proprietors? Can the Ohio farmer be divested of his farm? or can the officer of government be compelled to pay back the salary received? Certainly not.

The doctrine for which we contend is founded in reason and nature, and warranted by the practice of the United States. Not the least vestige is preserved, in our law books, of the various acts under which grants were made by the confederated congress, antecedent to the constitution. Yet every grant is held valid, and the lands are enjoyed by the patentee.

Now the act of 1795 was of this latter description. It directed the governor of Georgia, on the payment of certain sums, to grant these lands. The payments were made. In conformity with the act, the grants were issued. The subject was no longer *in fieri*. The act had received its full effect. And on neither of the principles above stated could that act be the subject of legislative discretion.

The judicial department alone was and is competent to pronounce the law, or ascertain the rights of the parties. In every point of view, therefore, the act of 1796 must be considered a nullity, and consequently every other act bottomed thereon.

To illustrate this proposition more clearly, the following dilemma is presented.

Either the act of 1795 was, by reason of the fraud and corruption of the legislature, in itself void, and, in contemplation of law, of no binding force, in which case the act of 1796 was likewise void and a mere nullity, expressing only the opinion of the legislature on a point of law, and not repealing an existing act; or a valid and legal contract was effected by the act of 1795, and the payments made in conformity thereto; in which case also, the act of 1796 was, and is void and of no effect. 1st. Because the act of 1795 had been previously carried into full and complete effect, and certain rights had vested in individuals, of which they could not be rightfully deprived by any after act of legislation; without a violation of the very fundamental principles on which all our governments rest, and of every principle of national and municipal law.

" Where a lawful power *contracts* in the name of " the state, it lays an obligation on the nation itself, " and consequently on all the future conductors of " the society."....*Vattel's Law Nat.* 334. *sect.* 215.

" All private contracts of the sovereign are na- " turally subject to the same rules as those of pri- " vate persons. If there arise any difficulty on this

" account, it is equally conformable to prudence,
" to the delicacy of sentiment, and to the love of
" justice that ought always to be conspicuous in a
" sovereign, to cause them to be decided by the
" tribunals of the state. This is the practice of
" all states that are civilized and governed by
" laws."....*Same author*, 343. *sect.* 213.

" There are acts which the federal or state legis-
" lature cannot do, without exceeding their autho-
" rity. There are certain vital principles in our
" free republican government which will deter-
" mine and over-rule a flagrant abuse of legislative
" power. As to authorise manifest injustice by
" positive law, or to take away that security for
" personal liberty, *or private property, for the pro-*
" *tection of which the government itself was esta-*
" *blished.* An act of the legislature, contrary to
" the first great principles of the social compact,
" cannot be considered a rightful exercise of the
" legislative authority. The obligation of a law,
" in governments established on express compact
" and on republican principles, must be deter-
" mined by the nature of the power on which it is
" founded. A law that punishes a citizen for an
" innocent action, or in other words for an act
" which when done was in violation of no existing
" law; *a law that destroys the lawful private con-*
" *tracts of citizens; a law that makes a man a judge*
" *in his own cause; or a law that takes property*
" *from A and gives it to B:* It is against all reason
" and justice to intrust a legislature with such
" powers; and therefore it cannot be presumed

" they have done it. The genius, the nature, and " the spirit of our state governments, amount to a " prohibition of such acts of legislation; and the " general principles of law and reason forbid them.

" The legislature may enjoin, permit, forbid and " punish; they may declare new crimes and esta- " blish rules of conduct for all its citizens *in future* " *cases*; they may command what is right, and " prohibit what is wrong; *but they cannot change* " *innocence into guilt, or punish innocence as a crime,* " *or violate the rights of an antecedent private con-* " *tract, or the right of private property.*".....*Dallas Rep. 3d vol.* 388.

2d. Because said act of 1796 is a direct infringement and violation of the constitution of the United States; inasmuch as said act impairs (or rather was designed to impair) a number of contracts for the transfer of property, which contracts had been previously executed and the property transferred.

The constitution of the United States says, article first, section 10th, " *No state shall pass any law* " *impairing the obligation of contracts;* and article sixth, section 2d, declares....." This constitution, " &c. shall be the *supreme law of the land;* and the " *judges in every state* shall be bound thereby, any " thing in the *constitution* or *laws* of *any state* to the " contrary notwithstanding". That a contract was made between the legislature of Georgia, and the Georgia Mississippi company in 1795 for the conveyance of these lands, has never been controverted; it is universally admitted, and even recognized in the act of 1796. The validity only of that contract

has been doubted; which is a question to be settled not by after legislation, but by judicial decision. The act of 1796, therefore, comes both within the letter and spirit of the prohibition contained in the constitution. This is one of the ligaments that bind the nation together, and the principle has been admitted by all our jurists. Judge Tucker, in his Blackstone, says, pt. 1. vol. 1st. ap. a. 4, & b. 19. "The legislature cannot exceed their "power without violating the *law of the people*, "that is, the *constitution*", and "all laws opposed "to the constitution are void", p. 91, which opinion is supported by Vattel, book 1. 30th. On this principle says Tucker, vol. 1. 89, "If a state "declares all contracts made *before or after* a cer- "tain day void, congress may repeal the act: *be-* "*ing against the constitution it is void in law.*"

Some have suggested, that the acts passed by the legislature of Pennsylvania against the Wyoming settlers, are precedents in support of the authority claimed by the legislature of Georgia in the year 1796.

A moments consideration will enable any one to perceive a striking difference in the conduct of the two legislatures.

The act of the legislature of Georgia *preceded* any judicial investigation or decision of the case. The acts of the legislature of Pennsylvania *were subsequent* to the repeated decisions of their tribunals, and to the final decree of the national court; as well as conformable to those decisions. The first, legislated to *prevent* a judicial decision. The last,

to coerce a compliance with the law, as declared by the constitutional organ.

Others have remarked that, by the laws of Great Britain, a grant of the crown, for fraud or deception, may be vacated; and from thence have inferred, that a subsequent legislature may vacate a grant made by a former. The conclusion does not flow from the premises. A grant made by the *crown* may, for deception or fraud *practised on the crown*, be vacated; though not against an innocent bona fide purchaser. It is believed no such rule was ever established. Nor could a grant ever be vacated for a *fraud practised by the grantee in conjunction with the crown.* It is the first principle of law on this subject, that all fraudulent contracts and grants are binding on the *parties* and *their representatives.* But the question is not whether a grant which was obtained by fraud can be vacated: it is, whether the grant of a preceding, can be annulled by a subsequent, legislature. The precedent produced is in point against the doctrine it is brought to establish. Neither he who makes, nor he who succeeds him, can avoid or vacate the grant. On the suggestion of fraud, the attorney general files a scire facias or quo warranto, in a court of justice; the grantee is notified to appear and make defence; and the cause is heard, tried and determined, in the same way and manner as any other cause between individuals.

But it may be objected.....

THAT THE RESCINDING ACT OF 1796, HAS RECEIVED THE FORMAL SANCTION OF THE PEOPLE OF GEORGIA BY THEIR LAST CONVENTION; AND THAT IN THEIR PRESENT CONSTITUTION, THIS ACT IS CONFIRMED AND DECLARED TO BE VALID.

The very circumstance of soliciting the convention of Georgia to declare the validity of this act, and their making the declaration, is proof, strong as holy writ, OF ITS INTRINSIC ILLEGALITY AND INVALIDITY. Why should the advocates of a valid or constitutional act solicit its sanction by a convention? Or why should the friends of this act give it that sanction? Only because it was neither *constitutional nor valid.*

The parents of this still-born act have been equally unfortunate in their attempt to give it life through the agency of their convention.

The sale of these lands was a subject upon which neither the convention, nor all the people of Georgia united, had any authority to act. The contracts were made. The grants were issued. The lands were transferred; and the rights vested in citizens not subject to the *laws of Georgia, but to the laws of the United States*....Citizens, who rely for the protection of their rights on the constitution and laws of the union; by which these rights are guaranteed by all the people of united America.

We have in a preceding part of this work proved,

that this act of the legislature of Georgia, is contrary to that article of the constitution of the United States which declares, " *No state shall pass any* " *law impairing the obligation of contracts.*"

This prohibition is not limited to the *states: it extends to the citizens of the states; who have not authority to adopt a constitution, or any article in a constitution, which is forbidden by the* CONSTITUTION OF THE UNITED STATES.

To prove this, it is only necessary to cite the second section in the 6th article of the national constitution. " This constitution, and the laws of " the United States which shall be made in pursu- " ance thereof, and all treaties made or which shall " be made, under the authority of the United " States, shall be the SUPREME LAW of the land; " and the judges in *every state* shall be bound " thereby, any thing in the CONSTITUTION *or laws* " *of any state* to the contrary notwithstanding."

What can be more clear or explicit? But unless this should be thought to be the exposition of interested individuals, hear what a distinguished judge of the high court of appeals in Virginia says on this subject. Judge Tucker, in his Blackstone, vol. 1st. p. 369, while speaking of the power given to the United States by this article of the national constitution, describes it as a *power* " *controuling not only* " *the acts of their* (that is the states) *ordinary legis-* " *latures*, but their VERY CONSTITUTIONS ALSO." And in page 370, he assigns the reason which induced the people to delegate this high power to the United States, in these words: " Nor could it be

" supposed that the constitution would possess " any stability so long as it was liable to be affect- " ed by any future change in the *constitution of any* " *of the states*".

Here let it be remembered, that the national constitution was established by the *whole people of this nation*, to form a security for *each individual* against the aggressions not only of individuals, but of *all bodies politic;* which demonstrates the truth of the doctrine maintained by the learned judge.

The right claimed by the people of Georgia, is also denied, and its exercise forbidden, by still higher authority than the national constitution. It is denied by every principle of NATURAL LAW. Power may vanquish but it cannot destroy right, since that is derived from the nature of things, and, while the passions and feelings of men are governed by the circumstances of the moment, remains founded on a firm and solid basis, which will abide forever.

If, as has been suggested, the conduct of the granting assembly was such as to authorise a recurrence to revolutionary principles, or, in other words, to a violation of all the common maxims of civil government,....an assertion which it is believed will be abandoned, when it is considered that Georgia composes only the thirty-seventh part of the nation; and when it is proved, as it will be beyond contradiction, that the granting act was highly advantageous to that state, and that more than one third of those who are charged with

bribery and corruption, are now and ever have been continued in the public service of the state, in important stations: still Georgia had no right, by the strong hand of power, to divest her innocent citizens, and *much less the innocent citizens of other states*, of their rights of soil, or of private property.

Here, again, we rely on the authority of the learned judge of Virginia. "The right of holding land by deed is a *social right*"....*Tucker*, "145; and "*when government is annihilated*, so-"CIAL *rights and obligations retain their force*"... *Tucker*, *vol.* 1, *app.* 6, *p.* 11.

From the same author we learn vol. 1, p. 358, that "no man shall be deprived of (his) property "without due process of law; which it is the pe-"culiar province of the judiciary to furnish him."

This idea is more strikingly displayed in the 357th page of the same author, where he makes use of the following language:

"The judiciary is that department of the go-"vernment, to whom the protection of the rights "of the individual is, by the constitution, espe-"cially confided....interposing its shield between "him and the sword of usurped authority, the "darts of oppression, and the shafts of faction "and violence."

Before we proceed to the question of fraud, a preliminary question presents itself. It is this:....Can the *motives* which induced a legislature to pass an act, be questioned or traversed before any tribunal?

The question here cannot be confined to any particular legislature; it must extend to all legislatures. Neither can it be limited to any given case; it is equally applicable to every legislature, and to *each* act of every legislature. Once establish the doctrine that the motives of a legislature may be traversed, and if found impure that their acts will be a nullity, and each citizen, upon whom any act operates, virtually acquires the power of suspending the operations of the act. Nor is this all: the decisions of the several tribunals will vary according to the different impressions resulting from the evidence produced. One, may find the motive pure; another, corrupt. One may believe the corruption so great as to destroy the validity of the act; another, though convinced of a partial impropriety, may not believe it sufficient to controul the express will of the legislature. Hence the act will be law at one time or place; while at another time or place it will not be law. The doctrine appears to lead to the destruction of government. Some have maintained that the judiciary cannot inquire into the constitutionality of an act of the legislature; and that with the law of the people in their hands, and the oath of God upon them to obey it, they are compelled to obey the act of the legislature in opposition to the law of the people; while this very law vested the legislature with every power they possess. But the advocates of the power here questioned, outstrip the most sanguine partizans of the judiciary. They transcend the limits of the constitution. They deny the powers vested in the legislature by that

instrument. They maintain that the judiciary may go beyond the powers vested by the constitution; and investigate, not whether the powers were delegated, but whether the delegated powers have been executed with a just and moral *intent*. They authorise the judiciary to enter into the holy of holies, to judge the hearts and measure the consciences of the legislature.

Does not this doctrine elevate each tribunal above the legislature of the country? Instead of the salutary and necessary power of judging between two laws, one made by the *people* and the other by the *people's* legislature,....does it not virtually invest the judiciary with the power of annulling every legislative act? The constitution has created a government of three estates, severally checking and restraining each other as necessity, in the opinion of either branch, may require. These powers are co-ordinate and co-equal: while acting in their several spheres, each power judges for itself. The moment this balance is destroyed, the constitution falls with it, and liberty is no more. Can the house of representatives impeach the supreme *court* for deciding on improper or corrupt motives? and can the senate convict the *court of crime*? No. The house can impeach a *single judge*, a member of the court, and he may be convicted. On the same principle each individual judge may be impeached and convicted. But should the melancholy time ever arrive, when on any case each judge is corrupted and convicted of that corruption, still the decision of the *court* remains. So

the *legislature* cannot be impeached, nor its motives or views questioned, nor its acts annulled, for any supposed criminality of motive. But a *member* of the legislature may be indicted; the motives of a member may be questioned; he may be tried for corruption, and when found guilty, *punished.*

This subject is inexhaustible: but we close our remarks by reciting a part of the constitution, in these words: "*Full faith* and *credit* shall be given "in each state, to the *public acts*, *records*, *and ju-* "*dicial proceedings*, of every other state."

From this injunction in the constitution, one of two things must follow:....either the *motives* of a legislature cannot be investigated; or full faith is given to an act, by denying its legal existence; and full credit, by branding it with the odious character of fraud and corruption.

WE WILL NOW CONSIDER THE QUESTION OF FRAUD.

In the preceding part of this work we have shewn, that the opinion given on this subject by the legislature was *extra judicial*, and concluded nothing. We have likewise shewn, that the proceedings of the legislature were *exparte*, and that the party whose rights and character were at hazard, had no opportunity to disprove or explain either of the charges alleged against them; so that the opinion of the legislature could not, on any principle, be deemed conclusive.

But the commissioners have reported a statement of facts, that is now before the public; which

statement, though liable to a variety of objections founded on the principles of law and natural justice, will not *at this time or place*, be controverted.

The report of the commissioners *tends* to prove...

1st. That most of the members of the legislature who voted in favor of the granting act, were part owners and partners in the companies, called the *Georgia Company*, and the *Tennessee Company*.

2d. That John King, a senator, and Thomas Raburn, a member of the house, were bribed.

3d. A declaration from General Gunn that judge Stith had 13,000 dollars for his influence to procure the grant, or grants.

We here remark that we are not the advocates of that legislature. We know not the principles that actuated that body. We detest and abhor frauds of every kind. To the candid and reflecting part of the nation we submit what follows, and leave them to decide whether the legislature of 1795, who passed the granting act, had or had not an eye "*to the public good*" of the state of Georgia.

The subject will be most correctly understood by reversing the order of the three points *attempted* to be established by the commissioners report.

First. As to the bribe of 13,000 dollars given to judge Stith for his influence. He was not a member of the legislature. As to his being bribed to influence the legislature, no one will pretend the declaration of general Gunn ought to stamp his character with this detestable crime; more especially when it is considered, that notwithstanding the powers

of government passed into the hands of persons strongly hostile to the grants, no inquiry has ever been made into his conduct; but on the contrary, he has since repeatedly been a member of the senate in that state, and always has and now does enjoy the confidence of the people.

Second. As to the real or supposed bribery of Thomas and Raburn. We answer....in the senate there was, at the final passage of the bill, a majority of three in favor of the grant: (*See the Journals of the Senate....p.* 44*). And in every stage of it a majority of two; *so that the act at no time depended upon the vote of Thomas in favor of the bill.* Again. In the house of representatives, there were 19 for, to 9 against, the grant. (*Journals of the House of Representatives, p.* 81.) *The vote of Raburn, therefore, could neither have made nor prevented the act.* There are two strong reasons to induce a belief, that the charge of bribery cannot be proved against either of these persons.

1st. No indictment or other prosecution has ever been instituted against either for the supposed bribery; and every person must presume, that if a public functionary or agent had been guilty of this crime, the justice of that state would not so long have slumbered over such gross iniquity.

* On the question shall the bill now be signed. The yeas and nays being required, are as follow: Yeas....King, Wright, O'Neal, Wylly, Walton, Hampton, Gersham, Cawthorn, Thomas, Man, 10. Nays....Milledge, Morrison, Blackburn, Wood, Lanier, Irvin, Mitchel, 7.

2d. It is unnatural and unreasonable to suppose that either the company from Virginia, to wit, Cox and his associates, or the company from Georgia, to wit, Gunn and his associates, or any other company, or individual, should advance his or their money to buy *two* votes, upon neither of which did the passage of the bill in the least depend.

But if they were bribed, as the bill would have passed, and IN FACT DID PASS, *independent of their votes, this bribery cannot constitute any legal or reasonable ground for annulling the act;* even admitting the contracts of a legislature can be annulled for an impurity of motive in that legislature.

In the third place. Let us now, for the sake of the argument, assume the fact that most, or, if any one pleases, all the members who voted for the granting act, were part owners in the companies of Cox and Gunn.

Here we admit an *indiscretion* in the members of the legislature. We admit a want of delicacy in them. We admit they have justly subjected themselves to the suspicions and jealousies which have wounded their honor. We will admit more, that it is justly to be considered *presumptive evidence of fraud.*

But before a final decision is had on this point, we most earnestly solicit every person to travel with us through a minute investigation of this sale, and a candid comparison between this act and every other act of Georgia, in relation to the lands in controversy. We the more earnestly solicit this,

because we believe, from the most critical examination of this subject, that *this act, which is so obnoxious, is by far more advantageous to the people of Georgia, than any other disposition of their vacant lands ever either contemplated or made by any other legislature of that state.* If by comparison this assertion should appear to be well founded, and even demonstrably proved, however indiscreet the legislature might have been, *it forever excludes all ideas of vacating the grant for fraud.*

The question is not, who were the grantees. It is this....Was the property granted for a just and reasonable consideration? Was the public good duly considered? Or were the interests of the state bartered to promote the private views of the members? It is material here to remark that many who have expressed their opinions on this subject, have omitted all the distinctions and differences that exist between the price, which either a nation or an individual can afford to give per acre when purchasing a country good and bad as it rises, and when purchasing a *selected township or section* in an extensive country. They appear to value lands, the usu-fruct of which at present belongs, and in all probability for a long time to come will belong, to the most powerful and warlike savages in America, at the same price that they do lands now ready for settlement, and surrounded by the active and hardy yeomanry of the nation. They forget that it is the industry and activity of the land-holder in opening and condensing settlements, by his patronage, his influence, his exertions, and the mills, roads,

bridges, schools, and the like, which he erects and establishes, that enables him to realize a profit upon his undertaking....a profit in itself precarious and not unfrequently transformed into a loss.

The former and after acts of the legislature and government of Georgia, as well as the proceedings of the legislature of 1795, constitute the true data by which to decide the merits or demerits of the granting assembly.

We proceed to consider....

1st. The proceedings of the granting assembly, in which it is proper to state the various propositions presented to their consideration.

The first proposition came on the 12th of November, 1794, from Albert Gallatin, Alexander J. Dallas, and Jared Ingersol, by their agent John Wereat. This agent proposed to purchase all the country included in the conditional sale made to the South Carolina Yazoo Company, at a price somewhat over 66,000 dollars....*See Journ. House Rep. Georgia, p.* 10.

The price offered was but little over half the sum paid upon the purchase, and the propositions were rejected.

It is understood that Mr. Wereat was by the company limited to the purchase of a few thousand acres, and that he greatly exceeded his authority. One thing is certain, these gentlemen had no interest in the purchase.

The second application was made on the 25th of November, 1794, by Patrick Henry, David Ross, Abraham B. Venable, John B. Scott, Wil-

liam Cowan and Francis Watkins, and their associates, *members of the Virginia Yazoo Company*, by their agent John B. Scott....*Journ. House Rep. Georgia, p.* 25.

This company were successful, and obtained the grant now known by the name of the Upper Mississippi Company's grant.

This will appear....

1st. From the report of the joint committee of both houses, in these words: " They have taken " into consideration the proposals of John B. Scott " and his associates, called the *Virginia Yazoo* " *Company*, for the purchase of a certain tract of " country described in the propositions made by " *them* to us, and are of opinion that the said pro- " positions are reasonable and ought to be agreed " to."....*Journ. House Rep. Georgia, p.* 42.

2d. The first act which was rejected by the governor, after describing the territory now called the Upper Mississippi Company's grant, declares the same " shall be sold to Patrick Henry, David " Ross, Abraham B. Venable, John B. Scott, " William Cowan, Francis Watkins, and John " C. Nightingale, and their associates, called the " Virginia Yazoo Company," &c....*Journ. House Rep. Georgia*, 77, 78.

The final bill under which the grants were made, passed to be engrossed with the *same grantees and title to the same property;* and between the first passage of the bill and its final passage after engrossment, the stile of the company, for some unknown cause, was changed from *Patrick Henry*,

Abraham B. Venable, &c. members of the Virginia Yazoo Company, to John B. Scott, John C. Nightingale, and Wade Hampton, members of the Upper Mississippi Company.

The third offer came from James Gunn and his associates, members of the Georgia Company; and the fourth from Thomas Glasscock and his associates, members of the Georgia Mississippi Company. Both of these offers were from citizens of Georgia, and were made on the 26th of November, 1794.....*Journ. House Rep. Georgia*, 29.

These two companies were successful.

The next proposition came from Zachariah Cox, of Virginia, and his associates, members of the Tennessee Company. This offer was made December 3d, 1794....*Journ. House Rep. Georgia*, 36.

The terms of this company were likewise accepted.

After the four last proposals were approved, by an acceptance of the report of the joint committee, and the faith of the state in part pledged, John Wereat, who, as before stated, had exceeded the authority given him by Messrs. Dallas and company, and whose proposals had been rejected because the price he offered was but little more than half as advantageous as the terms accepted, came forward, with three others, (we presume not implicating those he pretended to represent in his former application, as we are credibly informed those gentlemen had immediately disavowed his authority to represent them to so great an extent) and proposed to purchase all the tracts of land

which both the Georgia and Georgia Mississippi Company had offered to purchase; in quantity twenty-five million of acres, at 90,000 dollars more than was offered by these companies; and also to allow the citizens to come in and take at first cost, 5,000,000 acres, which was more than double the quantity of land reserved for citizens' rights in the two companies. They further offered to make the payment on the first day of *December*, 1795, and to advance 5000 *dollars, to be forfeited in case the payments were not duly made....Jour. H. R. Ga. p.* 49.

The Georgia Company was to make an advance of 50,000 dollars, and the Georgia Mississippi Company a like advance of 31,000 dollars; amounting to 81,000 dollars, both of which sums were to be forfeited to the state if the full payments of the purchase money were not made on the first day of *November*, 1795. The assembly considered the offer of 5,000 dollars for a forfeiture, as nothing more or less than a speculation to pay 200 *dollars on each million of acres for the chance to sell the same at a profit in the course of a year;* and with the right of taking the lands or not, at pleasure. They therefore proceeded to complete the bargain with the four companies. What legislature on earth would not have rejected the offer of that trifling penalty? Indeed the vote on this question proves the integrity of the legislature. For the members divided differently from what they had on their former votes on the sale of the lands. Three of the majority went over to the minority, and voted in favor of the terms offered by Wereat and his as-

sociates, and consequently against the bargain of the four companies. *These three were O'Neal, Saunders and Walker.* Raburn did not vote on the question...., *Journals H. R. Ga. p.* 49. *Yet Raburn is charged with bribery, and the other three with being secret partners.....See Rep. Comrs. Feb.* 10*th*, 1803. *p.* 45.

The first granting act passed the legislature, and was returned by the governor with his dissent

The legislature raised a committee to confer with the governor as to his objections to the sale. This committee reported, that it was essential to prevent a dangerous anticipation of the funds solemnly pledged to the suffering soldier and citizen, and to carry into effect an act previously passed, entitled " An act for appropriating a part of the unlocated territory of this state, for the payment of the late state troops and for other purposes therein mentioned", to carry the proposed sale into effect. They therefore reported that the whole money deposited, being 100,000 dollars, ought to be subject to the immediate use of the state, and that an additional quantity of 5,000,000 of acres be reserved and held in trust for the use of the state; together with some other trifling alterations, and on these terms that it would be expedient to grant the property. This report was accepted, 20 against 8. Dec. 30.....*Journ. H. R. Ga. p.* 72.

These terms were assented to by the four companies, and the act of January 7th, 1795, was passed by both branches of the legislature and received the governor's assent; because it had removed

three of his most important objections.....*See Gov. Mathews Speech, Jan.* 28, 1796.

But while these things were passing, *after the legislature had, on the* 30*th of December, made the offer of the property to the four companies, on the terms expressed in their journals of December* 30*th, p.* 72, *as is just above set forth; and after the four companies had acceded to these terms whereby the honor of the government was pledged and a right acquired by the four companies*, during the pendency of a bill designed *only* to carry these agreements into effect; John Wereat, who had already made two trifling and inadmissible offers, came forward with his last mentioned associates and offered to purchase of the state all the lands afterwards granted to the four companies, and from five to ten million of acres more, which were not included in the four companies grants, and to pay the state therefor eight hundred thousand dollars; to allow a reserve of four million of acres for the benefit of the state, and admit the citizens to hold another four million of acres on the original terms of purchase; and to draw bills of exchange on Philadelphia payable at double usance, and well indorsed, for forty thousand dollars, to be forfeited to the state in case they failed to pay the balance of the purchase money on the first day of December 1795.....*Journ. House Repre. Ga. p.* 79.

This proposal was also rejected by the house: *but Saunders and Raburn again voted in favor of it, and consequently against the companies to whose interest they are represented to have been devoted; and of*

whom it is said, one had been bribed and the other was a partner.....Journ. H. R. Ga. p. 79.

Let us compare this proposal with the terms upon which the grants were made.

1st. The four companies who purchased the property, paid in advance 98,000 dollars, which was immediately applied to the use of the state; 50,000 dollars of which, it has been proved by the speech of governor Mathews, was appropriated and expended in the course of the year; which also proves the state was in want of these funds. This whole sum was to have been forfeited, if the balance of the purchase money, amounting over and above said 98,000 dollars, to 402,000 dollars, had not been fully paid and satisfied by the four companies, on or before the first day of November, 1795.

2d. Their grants did not contain as much land as lay within the lines mentioned in the last bid from Wereat, into from five to ten millions of acres.

3d. These companies retained two millions of acres for the use of the citizens of Georgia exclusively, on the original terms of purchase.

Yet after all it must be admitted, that if the last proposals of Wereat and company had been accepted, *and duly complied with on the part of the proposers*, they would have been more " for the " interest of the people" of Georgia.

But what assurance had the legislature of Georgia that these proposals ever would have been complied with? Were the drawers of the bills offered, good and sufficient for the sum of forty

thousand dollars? Upon whom were the bills to have been drawn? Who were to be the indorsers, for his first associates had disavowed his conduct? On each of these points the legislature were left uninformed. To this day no man can tell on whose faith, character and responsibility these bills were to rest. Shall then the legislature be charged with crime, for refusing to listen to proposals bearing so many marks of a suspicious nature? Coming from a man who had already trifled with them by one bid at least 40 per cent. below what the four companies offered? By another, which clearly proved, by the trifling sum proposed for a forfeiture, a disposition *not to buy*, but to gain the *refusal*, until they could ascertain whether the lands would be productive or not? Every step of this pretended company of Wereat and his associates, clearly proves they were not serious applicants for the purchase of the property, but were endeavouring to throw themselves in the way of the Virginia and Georgia companies; and most probably for the purpose of extorting from these companies some money or lands as a compensation for their silence. This idea is corroborated and greatly strengthened by a reference to the particular situation of the negotiations, at the times when these proposals were presented. In each instance this pretended company were silent, until the agents of the companies and the committees of the legislature had agreed on the terms of purchase and sale. In each instance the offer of this company was proclaimed, after the legislature had accepted the reports of their committees in favor of the terms

offered by the four companies; which were vastly more for the advantage of the state of Georgia, than any other terms, before or since that session of the legislature, ever offered for the property, as will shortly appear. Is then the legislature to be charged with crime for not accepting these propositions? Does not the consideration that the legislature, on the 29th of December, offered terms, which the four companies embraced, prove that the faith of the state was pledged when the last proposition of Wereat & Co. was offered? And admitting, under all the circumstances stated, their bid was to have been considered as standing, in point of security, on equal grounds with the other offers, does not a rejection of that bid prove a strict regard to the honor and justice of the state? If one man offers his estate for sale to another for a certain price, and the person to whom the offer is made accepts the terms, can he who made the offer, consistent with honor and justice, retract the bargain, because he receives a better bid while the attorney is drawing the conveyance? Or are all the maxims of honor, faith, justice and common honesty laid aside in the transactions of life, whenever a negotiation commences between a state and private citizens?

We have investigated the proceedings of the granting assembly of Georgia; in which investigation we have labored under a thousand embarrassments, from a total want of knowledge of the characters who composed the granting and rescinding assemblies. We have possessed but little other data

than what was to be derived from the journals of the legislature.

In the second place, compare the act of the granting assembly with every other act passed by any legislature of Georgia, for the sale and disposition of her public lands. Whatever doubt may remain of the fairness and justice of the conduct of the legislature (for we say nothing of their prudence in relation to personal fame) we trust will, by this examination, be forever removed and dissipated.

The first act of Georgia, for the disposal of these lands, was passed the first day of February, 1788; by which that state offered to transfer a very large proportion of these lands to congress, for 171,428 dollars 45-90ths as before stated. The second act was passed in the fall of the year 1789; and by this act the legislature granted the greater part of the country to three companies, for the consideration of 207,580 dollars, upon condition the aforesaid sum was paid into the treasury of Georgia on a given day. A dispute arose between the adventurers and the state, on the question whether the purchasers had the privilege of paying for the lands in the depreciated notes of Georgia at par....the companies claiming, and the state denying, this right. In consequence of this difference no grants were ever made under this act.

The price demanded for the lands, under each of these acts, is so much below the price at which the lands were granted under the act of 1795, as to preclude the necessity of a particular compa-

rison: *yet many of the persons who raise the cry of fraud against the legislature of* 1795, *were in favor of the grants, both of* 1788 *and* 1789*: yet no charge of fraud or corruption has ever been heard against either of these legislatures: nor has any one published a list of the members who had shares in these companies.*

The convention between the United States and Georgia, of the 27th of April, 1802, since ratified by the legislatures of the two powers, when compared with the granting act of 1795, furnishes the data by which to decide whether the *granting or annulling assembly* paid the most vigilant attention "*to the public good*" of the state of Georgia.

Under the convention, there are ceded to the United States *fifty four millions and four hundred thousand* acres of land, for which the United States are to pay Georgia, 1,250,000 dollars out of the *first nett proceeds* of the sales of these lands, *without interest*. They are also, from time to time, to defray the expense of extinguishing the Indian claims to the lands reserved by Georgia.

Under the act of 1795, there were granted to the four companies *thirty five millions of acres*, TWO MILLIONS OF WHICH WERE RESERVED EXCLUSIVELY FOR THE BENEFIT OF THE CITIZENS OF GEORGIA ON THE TERMS OF THE PURCHASE. For these 35,000,000 of acres, with the reservation aforesaid, there was paid into the treasury of Georgia by the first of February 1795, 98,000 dollars, and by the first of November, 1795, an

additional sum of 402,000 dollars, amounting to the full sum of 500,000 dollars in specie.

Now if the thirty five millions of acres produced 500,000 dollars in specie, at the same price per acre 54 millions 400 thousand acres, the quantity ceded to the United States, would have produced and brought into the treasury of Georgia by the first day of November, 1795, 777,142 dollars 86 cents.

By the 19th section of the granting act, all the monies derived from the sales, after deducting the expenses of Indian treaties, were directed to be laid out in the purchase of six per cent stock of the United States, or in such other stock as an after legislature might direct. Suppose then the whole country ceded to the United States, by the convention of April, 1802, had been sold at the same rate with the 35 millions of acres granted to the four companies, and it would have produced in specie 777,142 dollars 86 cents. Allow two months for the operations necessary to invest this amount of specie in six per cent stock, which was then at 17s. and 9d. on the pound, or, in other words, eighty eight cents and three quarters of a cent in specie then produced one dollar in six per cent stock, and this 777, 142 dollars 86 cents would have produced to the state of Georgia on the first day of January, 1796, 875,653 dollars 92 cents in six per centum stock of the United States. Let this sum remain for an increasing fund, and as the quarterly interest falls due, invest it in stock at its cash value, and on the 1st day of January, 1805, Georgia would

have been in possession of 1,614,787 dollars and 40 cents of six per cent stock.*

* The several periods at which the specie is to be invested in the stock of the United States	The amount of each quarters interest in specie.	The price of stock at the commencement of each quarter	The amount of stock produced by investing the specie accruing from the stock at the end of each quarter.	The aggregate of stock on hand at the commencement of each quarter.
1796 January 1		88 75		875,653 92
- April 1	13,134 81	88 75	14,799 78	890,453 70
- July 1	13,356 80	87 50	15,264 92	905,718 62
- October 1	13,585 78	87 50	15,526 61	921,245 23
1797 January 1	13,818 67	83 75	16,499 90	937,745 13
- April 1	14,066 17	82 50	17,049 90	954,795 03
- July 1	14,321 92	83 75	17,100 80	971,895 83
- October 1	14,578 44	82 50	17,670 83	989,566 66
1798 January 1	14,843 50	83 75	17,723 58	1,007,290 24
- April 1	15,109 35	81 25	18,596 12	1,025,886 36
- July 1	15,388 29	73 50	20,936 44	1,046,822 80
- October 1	15,702 34	73 75	21,291 20	1,068,114
1799 January 1	16,021 71	81 25	19,719	1,087,833
- April 1	16,317 49	81 25	20,083 06	1,107,916 06
- July 1	16,618 74	77 50	21,443 54	1,129,359 60
- October 1	16,940 39	76 25	22,216 90	1,151,576 50
1800 January 1	17,273 64	80	21,592 05	1,173,168 55
- April 1	17,597 52	82 50	21,330 33	1,194,498 88
- July 1	17,917 48	83 75	21,394	1,215,892 88
- October 1	18,238 39	86 25	21,145 96	1,237,038 84
1801 January 1	18,555 58	87 50	21,206 37	1,258,245 21
- April 1	18,873 67	86 50	21,819 27	1,280,064 48
- July 1	19,200 96	91 75	20,927 47	1,300,991 95
- October 1	19,514 88	95 75	20,381 07	1,321,373 02
1802 January 1	19,820 59	99	20,020 80	1,341,393 82
- April 1	20,120 90	96	20,959 27	1,362,353 09
- July 1	20,435 29	101	20,232 96	1,382,586 05
- October 1	20,738 79	100	20,738 79	1,403,324 84
1803 January 1	21,049 87	99	21,262 49	1,424,587 33
- April 1	21,368 80	98 75	21,639 29	1,446,226 62
- July 1	21,693 40	95	22,835 16	1,469,061 78
- October 1	22,035 92	95 50	23,074 32	1,492,136 10
1804 January 1	22,382 04	95 50	23,436 70	1,515,572 80
- April 1	22,733 60	93 50	24,314 02	1,539,886 82
- July 1	23,098 30	94	24,572 66	1,564,459 48
- October 1	23,466 88	94	24,964 77	1,589,424 25
1805 January 1	23,841 36	94	25,363 15	1,614,787 40

But the 1,250,000 dollars are to be paid by the United States to Georgia *out of the nett proceeds* of the lands and *without interest*, and it must be remembered, that at this time the country is inhabited by several warlike tribes of savages, whose rights are to be extinguished by treaty and that treaty approved by the senate. This must certainly, on the most favourable calculation for Georgia, require one year. After this the lands are to be surveyed and located before the public agents can proceed to sell: the most sanguine partizan in favor of the rescinding act, cannot pretend that this survey will be accomplished in less than two years more. Besides, many of the claims of the settlers are first to be decided upon, and provision made to do them justice by some future act of congress. No one, therefore, can reasonably calculate for any considerable sales before the spring of 1808. When these things are considered, we believe every one will be ready to admit, that we make a highly favorable calculation for Georgia, in allowing her demand against the United States to be as good as a positive engagement from the nation, to pay her 1,250,000 dollars on the first day of January, 1810.

Consequently, to form a just comparison between the two cases, the 1,614,787 dollars 40 cents must remain an increasing fund until that period. Consider this sum then as an increasing fund, and the quarterly interest regularly invested in stock at its present price, which is 94 cents per dollar, and the whole product of the lands ceded to congress,

sold on the terms the companies purchased, would amount to 2,216,178 dollars 50 cents on the first day of January, 1810. From which sum deduct the difference between the value of cash and stock, being six per cent in favor of cash, and the true amount in cash value on hand, will be 2,083,207 dollars 79 cents. From this deduct the 1,250,000 dollars to be received from government, and the balance, being 833,207 dollars 79 cents, is a dead loss to Georgia, in consequence of the annulling act; or in other words, the granting act was so much more "for the public good" of the state of Georgia, excepting what ought to be deducted for the purchase of the native right to the remaining lands in her territory, which cannot be computed at more than one-third of the interest on the nett balance just stated. This is wholly independent of any estimate upon the value of the jurisdiction of that extensive country, which under the sales to the company was retained to the state, but under the convention of 1802 was conveyed to the United States, and which may be justly estimated to be worth the expense of buying the Indian title.

Some may suggest that the citizens of Georgia, as members of the American republic, are sharers in the profits which the nation may make by the sales of these lands; of which profits they would have been deprived if the same had enured to the four companies. This is true. But here again the calculation shews an increased benefit to the citizens under the granting act. The citizens of Georgia have an interest in the funds of the nation

in proportion to their numbers and no further. Decide this question then by the number of members of congress, and the proportion of that body delegated by Georgia; and this gives Georgia, in addition to her free people, the full advantage of all her black population. This part of the case will then stand thus: If 142, the whole number of representatives, enjoy the profits of 54,400,000 acres of land, what will 4, the number of the Georgia delegation, enjoy? The answer is, the four will enjoy the profits of 1,532,394 acres. That is, the people of Georgia will have applied to their benefit the profits of the last mentioned quantity of land. But under the grant to the four companies they were *exclusively* entitled to *two millions of acres*, and of course to the profits on that amount: consequently they would have enjoyed under the grants of 1795, the profits of 467,606 acres more than they will enjoy under the cession by their convention with the United States.

This calculation is not the bare suggestion of interested individuals struggling to save themselves and their friends from ruin. It is founded on fact, and will bear the most severe scrutiny.

In this comparison we have assumed the position of a sale of the whole 54,400,000 acres of land, at the same price per acre as the lands were granted to the four companies, and we have seen it issue in favor of the grants of 1795, to the amount of 833,207 dollars 79 cents, in specie, on the first of January, 1810.

Let us now make the comparison between the situation in which the state of Georgia was left by

the act of 1795, and the one in which she is placed by the rescinding act of 1796 and the convention of 1802.

By the act of 1795 there were granted 35,000,000 of acres: by the convention of 1802 there were ceded 54,400,000 acres; or in other words, by the convention of 1802 Georgia has yielded up and lost 19,400,000 acres of land, which governor Mathews and the granting assembly preserved for the use of that state.

By the convention of 1802, Georgia at some future day (and we believe we have satisfactorily shewn it cannot be earlier than the first of January, 1810) is to receive from the profits of the land 1,250,000 dollars, without interest. By the granting act of 1795 *she actually* received 500,000 dollars in specie; which being, according to the provision of the 19th section, formed into a fund and kept increasing, upon the same principles and in the same manner as has been just stated, would have produced on the first day of January, 1805, 1,038,925 dollars 70 cents in six per cent stock of the United States: and on the first day of January, 1810, the earliest day that on any calculation can yield to Georgia her money, the sum of 1,425,850 dollars 2 cents in like stock; which sum in stock is 175,850 dollars 2 cents over and above the 1,250,000 dollars to be received from the United States*: which balance, after deducting six per

* If any one doubts this assertion, a simple application of the rule of three will convince him of our correctness....say as 777,142 80 is to 1,614,787 40, so is 500,000 00 to —— or as 777,142 80 is to 2,216,178 50 so is 500,000 00 to ——

cent. for the difference between the value of stock and cash, amounts to 90,299 dollars, and is a dead loss to the state of Georgia in addition to the 19,400,000 acres of land.

By the convention of 1802, she parted with a jurisdiction which at some period, not very remote, will be of more intrinsic value than the whole jurisdiction she has retained, and the price of extinguishing the Indian title to the territory now occupied by them and by her reserved. By the granting act of 1795 the jurisdiction of all this country was retained to Georgia, and, by the 20th section of the same act, the settlement of the purchased territory, within five years after the Indian title could be extinguished, was secured under a penalty of 5000 dollars, to be paid by each company.

In short....

In favor of the rescinding act and the convention of 1802....There is the price of the future Indian purchases in what is now Georgia, and the *probable* receipt of 1,250,000 dollars on the first of January, 1810, with the loss of half the jurisdiction of Georgia, and of an additional quantity of 19,400,000 acres of land.

But in favor of the sales of 1795.....There would have been the *certainty* of 1,425,850 dollars 2 cents in six per cent. stock in the treasury of Georgia on the first of January, 1810; the preservation of 19,400,000 acres of land for the benefit and profit of that state, which are now conveyed to the U. States, and a retention of her full benefits of jurisdiction and government; with the expense of purchasing the Indian claim to their vacant lands.

Who can doubt which train of negotiations tended most to the dignity, prosperity and wealth of that state?

A comparison of the circumstances under which the different acts were adopted, will not be less favorable to the granting assembly.

When the grants were made to the four companies, the crown of Spain made claim to at least one-third of the whole country: when the cession of 1802 was made Spain had relinquished her claim. At the time of the first act, Spain was in actual possession of the country and exercising sovereign authority....At the time of the last, Spain had withdrawn from the country and it was within the actual jurisdiction of the United States, whereby the rights of the owners were secured.

When the act of 1795 was passed, the state and nation had scarcely terminated a long and bloody war with the savages inhabiting the country;.... when the convention of 1802 was ratified, the nation and state had enjoyed a profound peace with these and all other savages for near seven years; and the astonishing growth and prosperity of the nation had satisfactorily proved, we had nothing to fear from Indian wars.

When the convention was ratified the nation enjoyed the free navigation of the Mississippi and a right of deposit at New Orleans, which are essentials to the value of these lands; when the grants of 1795 were made the nation was excluded from these benefits; there was no place of deposit, and

the navigation of the Mississippi was entirely under the controul of a foreign power.

The contrast is striking; and when, under all these embarrassments, we find the contracts of the legislature of 1795 vastly more for the advantage of the state than the rescinding act and the convention of 1802, can it be said, that legislature had not a just regard to the public good?

If it be objected that the smallness of the price proves the fraud of the legislature, we answer,..... This proves too much. It proves a still greater degree of corruption in the legislatures of 1788, 1789 and 1802; for each of these legislatures offered to sell the property for a much less price. It proves that some after legislature (and in fact every argument in favor of the rescinding power does prove this) may rescind the various acts under which the United States now make claim to these lands. It forever annihilates the contracting powers of all legislatures. Various other answers may be given. The different states in the union have adopted different modes of disposing of their vacant lands. Vermont granted hers in townships for a mere trifle, except office fees. Pennsylvania at 10 pounds or 26 dollars 67 cents for each thousand acres to all applicants; which is less than three cents per acre. Virginia at two cents per acre. The two last states in the same year of 1795 granted millions of acres at these prices. Massachusetts sold the whole of the Genessee country, which is more remarkable for fertility than any other portion of country of equal extent east of the Allegany, and

in the neighborhood of states possessing a redundant population, at a little over 6 cents, in specie, per acre.

In the same year and within three years preceding, in the district of Maine, which then had a population of 120 thousand souls, this last mentioned state sold immense quantities, partly in large tracts and partly in townships, possessing every convenience for navigation, at a price not exceeding ten cents per acre. In all these cases the lands, except those in Genessee, were free from Indian claims, and ready for immediate settlement. But the lands in controversy are, and for years to come may be, subject to the native claims. We believe that, with one exception, we may with truth aver, that no state has ever sold an extensive tract of vacant lands subject to the native claims at a price as high as 8 cents per acre. If then any supposed inadequacy of price proves the fraud and corruption of a legislature, it will not be the fortune of the granting assembly of Georgia to rest alone under the stigma. Nor are the titles we have, the only titles to be vacated.

The difference between the price given by the company of Glascock, &c. to the state of Georgia, and the price given by the New England company to Glascock and his associates is most easily explained by the difference of the situation of these lands. When Glascock and his associates purchased, Spain was, and for thirteen years had been in possession of about four fifths of our lands, claiming thereto all rights juridical and territorial. At this

time there was no place of deposit at New Orleans, nor was there a free navigation of the Mississippi.

But when the New England Company purchased of Glascock and his associates, Spain had, by treaty, yielded to the citizens of the United States the free navigation of the Mississippi, and the right of deposit at New Orleans, and had ceded all her pretensions to the lands in controversy. *This treaty was not at this time ratified.*

Suppose the United States had yielded the claims of Georgia and their general jurisdiction to Spain, instead of Spain's yielding her pretensions, would Georgia have refunded to Glascock and his associates the 155,000 dollars they advanced? It cannot be pretended. As Glascock and his associates ran the risque, is it not reasonable for them to enjoy the benefits of this treaty? Shall they be deprived of those benefits by a power who would have thrown the loss upon them if one had happened? Or does any person believe that if the country had been yielded to Spain, Georgia would have attempted to rescind the grant to this company and directed a return of even *nine tenths* of the money?

In this investigation we have admitted, the members who voted for the grants were acting in the double character of sellers and buyers, which is *presumptive*, BUT NOT CONCLUSIVE, *evidence of fraud.* To rebut which *presumption*, we have clearly proved, the contracts made under the act of 1795, were vastly *more* "*for the interest of the people of* "*Georgia*" than any disposition of the vacant lands ever contemplated by any other legislature, and that

under the circumstances these members ought not to be charged with any crime for rejecting the offers of Wereat and his associates. If the reader believes with us, he will be ready to acquit them of the high crimes of corruption and perjury, and soften down the charge to mere *imprudence* and *indiscretion.* This indeed appears to be the light in which, after the moments of a resistless agitation, this transaction has been viewed in Georgia.

We infer this....

1st. From the consideration, that although the government, at the first subsequent election, passed into the hands of persons hostile to these grants, in which hands the executive part has ever since been kept, yet of all these offenders who, it is supposed, had committed this audacious breach of trust, and had heaped upon their heads this accumulation of crime and guilt, *no one person has ever been brought to punishment, nor even informed against or indicted.*

2d. Because we find, that both the government and people of Georgia have repeatedly bestowed *honors and offices*, *since* that period, upon more than one-third of all the members charged with these high crimes; and it is INCREDIBLE, that persons covered with infamy and guilt should not only escape punishment, but should also retain the confidence of both the people and government, while it is very natural to believe that a mild and generous people, after their passions had subsided, should draw the veil of oblivion over the *imprudence* and *indiscretion* of those in whom they had previously confided.

For the names here given, in proof of the fact stated, we refer to the commissioners report of February 10th, 1803, where it will be found, that each of these persons voted for the granting act of 1795, and stand charged with the crime of being partners in the companies of Gunn and Cox. From perusing the depositions recited in that report it will also appear, that few, if any, of the members stand more fully and clearly charged with the supposed corruption and fraud.

Of the persons accused, *John King*, ~~*William Fitzpatrick*~~, *Richard Carnes, and Locklin Mc'Intosh*, have since repeatedly been *elected members* of the house of assembly; and ~~*the last*~~ *Richard Worsham* has been also repeatedly appointed a *judge by the legislature.*

Ferdinand O'Neal, Davis Gersham, Luke Mann and Robert Walton, have been as frequently elected *members of the senate* of Georgia, and the latter gentleman, by that honorable body, has been elected *president of the senate.*

Ferdinand O'Neal has been appointed, by *act* of the *legislature*, a *trustee* of the *university* of Georgia, to superintend the morals and education of the rising generations.

Archibald Gersham has frequently since been appointed a *judge* by the *legislature*, and *Stephen Heard* has been commissioned as a *magistrate.*

Our limited information forbids our proceeding further.

Here then we find, of the *twenty eight* who voted for these grants, *one* has since been elected *presi-*

dent of the senate....four have frequently been members of that *honorable body....four more*, members of the *house....two* elevated to *seats* of justice.... one has been appointed *trustee* to *an university*, and *one* more *a conservator of the public peace.*

Here is a continuance in public life of as great a proportion of a legislature as can usually be found in most states for such a length of time; and particularly in times of party politics, when a state has experienced a political revolution.

Is it strange then that we should doubt the guilt of these men and their fellow members, when instead of *punishment*, which usually follows a conviction for *crimes*, we see these *strong marks of integrity and public approbation* by every *department of the government*, as well as by the *people*?

May we not justly consider this the solemn verdict of the government and people of Georgia in favor of the innocence of these citizens? And shall these be pronounced innocent, and their fellow members upon the same evidence which exists against them, be found guilty?

In short, what strange and mysterious fraud is that, where the interests of the state are most tenderly watched over and protected?....where the acts of the guilty are more beneficial to the state than the most splendid acts of her first patriots?.... where its perpetrators, stained with corruption and perjury, instead of punishment, reap a full harvest of honor and confidence?....where the voice of guilt is heard in the halls of justice and legislation, and instructing the rising generation in morals?....

where the guilty are honored, and the innocent punished?

In this extraordinary case every thing assumes a new character....Even Justice herself, blind to the crimes of the *guilty*, smiles and courts them as they pass, listens to their wisdom in the senate, and seats them by her side in her temple: then, burning with indignation at the violation of her laws, she roams a thousand miles, and binds a thousand *innocent victims* to sacrifice on the altar of her vengeance.

If, notwithstanding the various facts and arguments which have been submitted in support of the act of 1795, it is still believed that the legislature were bribed, and that the grants which were issued in favor of those who corrupted them are void; yet it by no means follows, that all grants issued under that act were likewise void. *The grants to innocent grantees must be good.* From the evidence which has been published by the commissioners it appears, *the members of the legislature held shares in the companies of Gunn and Cox.* THERE IS NOT THE LEAST EVIDENCE AGAINST THE GEORGIA MISSISSIPPI COMPANY UNDER WHICH WE CLAIM. Nor is there any evidence against any member of that company, except three or four instances of *exparte*, *hearsay* testimony against *one* member who was likewise deeply interested in Gunn's company. We shall not press this consideration from a conviction of the truth and force of the arguments heretofore suggested.

Finally....ADMITTING THE MOTIVES OF A LEGISLATURE MAY BE INVESTIGATED, WITH A VIEW TO DECIDE ON THE VALIDITY OF THEIR ACTS, AND THAT THE MOTIVES OF THE LEGISLATURE OF 1795 WERE CORRUPT AND IMMORAL, WHEREBY THESE GRANTS MIGHT HAVE BEEN VACATED AS AGAINST THE FIRST GRANTEES FOR THE BENEFIT OF THE STATE OF GEORGIA; IT REMAINS TO BE ASCERTAINED WHETHER AN AFTER GRANTEE, BEFORE A JUDICIAL DETERMINATION OF THE POINTS HERE ADMITTED, CAN TAKE ADVANTAGE OF THE FRAUD AND CORRUPTION; AND WHETHER IN FAVOR OF SUCH PURCHASER, THESE TITLES SHALL BE SET ASIDE IN THE HANDS OF INNOCENT THIRD PERSONS WHO HAVE PURCHASED BONA FIDE AND FOR FULL CONSIDERATION, IN A CASE WHERE THE INNOCENT HOLDERS APPRISED THE AFTER PURCHASER OF THEIR RIGHTS BEFORE HIS PURCHASE, AND FILED THEIR CAVEAT TO PREVENT SUCH PURCHASER FROM INTERFERING TO THEIR INJURY.

In the first place....Can an after grantee take advantage of the fraud and corruption?

The question is to be decided upon the principles of the common law, there being no positive act of legislation either in the United States or in the state of Georgia which reaches this case.

By the common law, *no person can avoid a fraudulent conveyance unless he had a right and title to the thing at the time of such conveyance.....Bacon's Abrid. vol. 2d. p.* 602.

In the language of lord Bacon...." If the gift (or " grant) were *precedent* to the right, there was no " way in such case to set aside the conveyance".... *same page.*

Now the rights of an *after purchaser* (if any) must accrue *subsequent* to the first grant; and as this *after* purchase cannot *precede a former* grant; so at common law, an *after purchaser* cannot set up his title against a *prior* grant, for any fraud practised in obtaining that grant. The reason of the rule is obvious.....Fraudulent grants are binding between the parties, and are set aside *only to save innocent persons who might otherwise be injured;* and as an after purchaser had no interest in the thing at the time, the law presumes that such person could not be injured by the grant. The truth of this doctrine is illustrated by the several *legislative acts*, which in other states and countries have been adopted in favor of *after purchasers.* Apply this reasoning to the *after purchase* made by the United States of Georgia, and the *inference is certain and inevitable.*

In the second place. Shall these titles, in favor of such *after purchaser*, be set aside in the hands of innocent third persons, who purchased *bona fide* and for full consideration, when these purchasers apprised the after purchaser of their rights, before the last purchase, and filed their caveat to prevent such purchaser from interfering to their injury?

In this place it is necessary to remark, that some have endeavored to raise a presumption of notice to the present claimants.....

1st. From the time that elapsed between issuing the grants and the conveyance to the persons we represent; and the circumstance that a number of presentments of grand jurors against these sales, and other political productions on the same subject, during that period, appeared in the Georgia newspapers.

We answer.....We never saw a Georgia newspaper until after all these events passed; nor do we believe any member of the company ever saw one in which a word was stated in relation to these lands. The newspapers of Georgia, though probably taken by the printers, to this day never have had a circulation in New England; and at the time of these transactions the circulation of all newspapers was much more limited than it has been for the last seven years. We did not go to Georgia to buy the land; the citizens of Georgia came to us to to make sales, a distance of eleven hundred miles, armed with every authority and evidence of title which the state of Georgia could give.

While it may be believed the enlightened citizens of those states, whose first characters had effected the purchases of the legislature, and whose proximity and intercourse led to a knowledge of the affairs of Georgia, might have known of these presentments and political writings; it is unreasonable to suppose the busy and peaceful merchants, mechanics and farmers of New England, or any other characters, had knowledge of these events.

Besides, who will believe that a careful, prudent industrious, and economical people, who, to ac

quire a competency for their families, and the winter of life, had through life travelled the hard road of labor, would embark their all in titles known to be obtained by fraud, and to be contested by a sovereign state?

2d. From the circumstance that in the deed from Glascock and others, to our trustees, the covenant of warranty is *special and not general.* That this part of the case may be fairly understood, we here insert that covenant at full length. It is in these words:....

" And the said Nicholas Long, Thomas Glas-
" cock, Ambrose Gordon and Thomas Cumming,
" for themselves, and their respective heirs, execu-
" tors and administrators, do jointly and severally,
" covenant, promise and agree to and with the
" said William Wetmore, Leonard Jarvis, and
" Henry Newman, and the survivors and survivor
" of them, his heirs and assigns, in manner follow-
" ing, that is to say, that they the said Nicholas
" Long, &c. and their heirs respectively, the said
" tract or parcel of land, hereditaments and other the
" premises hereby granted, with the appurtenances,
" unto the said William Wetmore, &c. and the
" survivors or survivor of them, his heirs and as-
" signs, against them the said Nicholas Long, &c.
" and their heirs, and against all and every person
" and persons whatsoever, lawfully claiming, or to
" claim the same, or any part or parcel thereof, by,
" from or under them, or any or either of them,
" shall and will warrant and forever defend by these

" presents; and further, that they the said Nicho-
" las Long, &c. and their heirs respectively, and
" all and every other person or persons whatsoever,
" lawfully claiming, or to claim, any estate, right,
" title, or interest of, in or to the said tract or piece
" of land, hereditaments and premises, hereby
" granted, or any part or parcel thereof, by, from
" or under them, or any, or either of them, shall
" and will, at any time or times hereafter, upon
" the reasonable request, and at the proper cost and
" charges in the law, of the said William Wet-
" more, &c. the survivors or survivor of them, his
" heirs or assigns, make, do, execute and acknow-
" ledge, or cause, or procure, to be made, done
" executed and acknowledged, all and every such
" further and other act or acts, deed or deeds, con-
" veyances and assurances in the law, for the fur-
" ther, better, and more perfect, absolute and satis-
" factory vesting, granting, conveying and assur-
" ing, all and singular the said tract, or piece of
" land, hereditaments and other the premises, here-
" by granted, with the appurtenances, and every
" part and parcel, unto the said William Wet-
" more, &c. and the survivors and survivor of
" them, his heirs and assigns for ever, discharged
" and exonerated from all claims to dower or
" thirds in the said land, as by the said William
" Wetmore, &c. the survivors and survivor of
" them, their or his counsel learned in the law,
" may be reasonably devised or advised and re-
" quired; subject, nevertheless, to the incum-

" brances, conditions, provisions, restrictions, re-
" servations and charges herein before mentioned.
" And lastly, it is covenanted and expressly agreed
" and understood by and between the parties to
" these presents, that the said Nicholas Long, &c.
" and their heirs respectively, are not to convey,
" or be bound hereafter to convey, any other or
" *greater* estate, than that derived by the said
" Georgia Mississippi company from the state of
" Georgia, as aforesaid, and that the said William
" Wetmore, &c. and the survivors and survivor
" of them, his heirs and assigns, are from hence-
" forth and forever hereafter, to stand and remain
" seized and possessed of the land included in the
" grant to the said Georgia Mississippi company
" (the said six hundred and twenty thousand acres
" reserved as aforesaid for other citizens of the
" state of Georgia aforesaid, only excepted) in
" the place, manner and stead of the said Georgia
" Mississippi company; and therefore, that nei-
" ther the grantors aforesaid, nor their heirs, exe-
" cutors or administrators, shall he held to any
" further or other warranty, than is herein before
" expressed, nor liable to the refunding of any
" money on any account or pretence whatsoever."

Here there is a covenant of warranty against all claims derived from the grantors.....a covenant to execute any further or better deed of conveyance or assurance.....a covenant that the grantees shall hold the estate discharged from all claims of dower, and a mutual covenant that the grantors should not

be holden to convey any *greater estate* than they derived from the state of Georgia; nor to any further warranty than was before expressed; *nor be liable to refund any of the money on any account or pretence whatever.*

It may be asked, why was the covenant " not " to be holden to convey any *greater estate* than they " derived from the state of Georgia?" We answer, because in their contracts with our company, they had estimated the quantity of land contained in the tract, at 1,380,000 acres more than was computed at the time of their purchase; and because a great proportion of the country was then in the possession of the crown of Spain; and although she had, by treaty, agreed to relinquish it, yet that treaty had not been ratified by either power: subsequent events might prevent its ratification, as has lately happened in relation to another treaty between the same powers; and we were willing to assume these two risques.

It may be asked, why we did not require a general warranty, and why it was agreed that the money should not be returned on any pretence? We answer....because we had always been accustomed to look upon the public faith as sacred. The governments to which we belong have strictly fulfilled their contracts, and though not bound by a warranty, for a government never warrants, have, in every instance where they ever made a grant, made good to the grantee, or his assigns, all damages that have accrued from the failure of that

grant. Not an instance to the contrary can be produced. We, therefore, confided, for the security of our title, *in the laws, the honor, and good faith of the state of Georgia*, not in the *fruitless* warranty of *four* men to guarantee 11,380,000 acres of land. Our conduct corresponded to the practice which has been almost invariably adopted in the United States, in every case of a sale of an extensive tract of country. Vide porter p. 109.

The very circumstance of our agreeing to these covenants, is evidence of our innocence, and confidence in the government of Georgia. Who will not more readily believe this, than give credit to the wild and extravagant idea, that any number of discreet and sober people should purchase, at this immense sum, a title known to be obtained by fraud, and denied by the sovereign power who granted it, or, in other words, by the body of the people for whom that power acted, and at the same time agree never to call on the sellers to refund the purchase money?

Let us now return to the principal question.... Shall these *innocent* purchasers be deprived of their lands by the *after* purchaser, who at the time of her purchase had notice of their claim?

Fraudulent contracts are binding between the parties. They are not, as some appear to have believed, wholly void and inoperative; they are not that dead stock, on which no scion can be grafted. *They are vacated and annulled only to preserve the rights of innocent third persons.* They are not, in

all these cases, declared void. When a man fraudulently conveys his property to avoid his debts, and afterwards pays these debts and dies, the grantee will hold the property against the widow and orphan: this is legal policy to deter people from entering into such conveyances; but the widow and orphan are innocent.

Sometimes a case occurs in which a fraud has been committed, and innocent persons have rival and contending interests. In such case, the court must proceed to consider which of these innocent parties has the highest claim to the property. To do this, after a knowledge of the facts, they will inquire whether there be any statute law, which governs the case; and if they find such law, their decision must conform thereto, notwithstanding it decrees the property to the party *against* whom the court would decide, when judging according to the rules of the common law and chancery. Of this description are all cases which come within the statutes of bankruptcy, and the statutes against fraudulent conveyances, where an express provision is made by *statute law* to secure the *rights* of *creditors*, or any other rights acquired *antecedent* to the conveyance. *But the case under consideration does not come within this rule.* Georgia has not committed bankruptcy, nor is the question between her assignees under a commission, or her *creditors* and the *innocent* purchasers of her grantees; neither is there within our knowledge any *statute law* which can govern in this case, and decide the question between the *innocent* holders and

the citizens of Georgia, or the *after* purchaser. Every decision of the English authorities under the statute of the 27th of Elizabeth, *in favor of an after purchaser* is wholly inapplicable, for the principles of this statute have never been adopted as law in any of the courts of this nation: equally inapplicable are all decisions under the bankrupt acts against innocent purchasers, or under any statutes made for the protection of creditors, if any such decisions exist.

In other cases, where the courts are not controuled by *statute law*, where two parties equally innocent claim to have right to the property; after the fraud is found, the court in deciding between the rival pretensions of these *innocent* persons, will conform their judgment to the great principles of common law and chancery.

The case now under consideration belongs to this class; and here the question divides itself into two....

1st. As between the people of Georgia and the innocent holders: to whom will the property be decreed by the rules of the common law and chancery?

2d. By the same rules of law and chancery to whom do the lands belong? To the *innocent persons* whose fortunes are pledged in this property, which they bought with good faith and for full consideration? or to the *after purchaser*, who stands committed for *nothing* except what is to be derived from the *profits* of the land, and an eventual extinguishment of the Indian claims; from which she

will be exonerated if the law decrees the property to the innocent holders?

In considering the first question (for the purpose of the discussion) we will admit, that the people of Georgia, not as individuals, but in their collected capacity, or in other words, as a state, were the lawful proprietors of these lands; that the legislature of 1795 were their agents, within the constitution, to do what they believed to be for the good of the people; that this legislature became corrupt, and were bribed by the original grantees, and fraudulently conveyed the lands to the companies. On the other hand, the present holders are innocent purchasers. Here a loss must be sustained, and both parties are equally innocent. On whom shall the loss fall? Most certainly on the people of Georgia; for this irresistible reason....*Because it was their act, that vested the members of that legislature with the power to commit the fraud, and occasion the loss.*

Although they cannot be charged with any criminal intent, yet as it relates to the rights of the parties, the act of 1795 is, in contemplation of law, *their act, qui facit per alterem facit per se.* It was the people of Georgia, who intrusted these men with the *insignia* of sovereign authority; who by their constitution had declared that the acts of *these members* were both to be *accredited* and *obeyed;* and whose *faith* and *honor* stand pledged to all innocent persons for a faithful performance of every engagement made by that legislature.

It was the people of Georgia, who permitted these fraudulent grantees, who were citizens of the state, and subject to her laws, to traverse every part of the nation, armed with every mark of her power, and every symbol of her authority, that could allure the innocent citizens of the other states to accredit that power and authority.

And shall *they* now say "you, who are innocent, "who have reposed your confidence, because *we* "assured you in the most solemn manner it was "merited, shall bear the loss! We are as innocent "as you, and as we have the *power*, we will save "ourselves, at the expense of your ruin! although "every *act* was *ours*, every *misfortune* shall be "yours!" While justice remains on earth no such decree will ever be adopted.

In support of the doctrine for which we contend, we rely on these authorities.

A *general agent* may do every thing which his principal *may*.....*Pendleton, chief justice, Virginia. Hoe, &c.* v. *Oaxley, &c....Judge Washington Rep. vol.* 1, *p.* 23.

The *principal* is bound, however the *agent* may misapply the property, &c....*Same case, p.* 24.

Again says the chief justice, in the case of *Norton and Rose, Washington Rep. vol.* 2, *p.* 245.... "*Where one of two innocent persons must suffer by* "*the act of a third, he, who hath enabled such third* "*person to occasion the loss, must sustain it.*"

Judge Washington, in reply to Mr. Wickham, says, "an *absolute conveyance* by a *trustee* to a third "person, without notice; a sale by *a mortgagee*,

" having an *absolute* conveyance, though in fact in-
" tended only as a *security* for money, to a stranger,
" without notice; a conveyance by the *vendee* of
" land, when the *vendor* had a *lien* upon it, for the
" *consideration money* without notice; in these cases,
" the right of the *cestui qui trust*, *mortgagor*, and
" *vendor*, are *defeated.* In all these cases the *grantee*
" takes the land, discharged of the equity; be-
" cause, having acquired a legal title and being a
" purchaser for valuable consideration and without
" notice, he must prevail"....*Same*, 244--5.

In each of these cases there was a *fraud* committed; in each case the question was between two *innocent* persons. The *cestui qui trust*, the *vendor*, and the *mortgagor*, on the one side, and an *innocent purchaser*, on the other. In each case the *innocent purchaser* was *preferred*, and held the property; " *because the other party had by his act enabled the* " *trustee*, *mortgagee*, *and vendee*, *to commit the* " *fraud*, *and so must bear the loss.*"

This great principle, which of itself decides the question in favor of the innocent claimants whose rights we advocate, is more clearly avowed, and more pointedly enforced, by the chief justice of Virginia, in the case of Hoe, &c. *v.* Oaxley, &c.... *Wash. Rep. vol.* 1. *p.* 24.

" An alarm (says he) of danger to the fortunes of
" all principals is sounded. The answer is a short
" one. *This danger should be contemplated when the*
" *power is given*, *and not when it has been exercised*,
" *and many innocent men thereby drawn in to advance*

" *their money on the faith of an open and notorious* " *agency.*"

Apply this principle to the present case. The legislature of 1795, had an open and notorious agency: the people of Georgia were bound to contemplate the dangers they assumed when they delegated that power. The delegated power has been exercised; and *thousands* of *innocent* persons thereby *drawn* in to advance their money. The conclusion is, *as they enabled their agents to do the act, so they must sustain the loss.*

In every case where the person holding the title is an *innocent* purchaser for full consideration and *without notice*, he is protected in the enjoyment of the property against all persons whether creditors or after purchasers, notwithstanding any fraudulent intent between the original grantor and grantee, or either of them; unless the court is compelled to decide otherwise by the general principles of some statute law: And in the case before us we have already shewn there is no such statute law for the government of the court.

If a man alien by voluntary conveyance, and the *alienee* sell for valuable consideration, the *land is forever bound.*

So if a man obtain by fraud a negotiable note, and actually negotiate it *for value*, the *indorsee* of the note shall have the money of the drawer...*Har. ch.* 23....*Peer Wm.* 496....2*d Vern.* 764....*Sidderf.* 133.

So if a man who comes in under a *fraudulent* conveyance *sells* for *a valuable consideration*, and

without notice of the fraud, it is an *opposite title*.... *Gilbert*, *ch.* 62.

If, therefore, a man claims under a person committing the *fraud*, he must set forth that *he comes in for a valuable consideration, and without notice of the fraud*....*Chan. Ca.* 278....*Salisbury* v. *Baggot.*

A plea of *purchase* for *valuable consideration*, and *without notice*, *protects* the defendant from giving any answer to the title set up against him....2*d Atkyns*, 241.

So where the defendant claims under a *purchase without notice*, for valuable consideration, this may be pleaded in bar to the plaintiff's demand....*Mitford*, 215.

The law carries this doctrine so far, that a purchaser *with notice* of a purchaser *without notice* may shelter himself under the *first* purchaser.... *Prec. Chan.* 51.

Indeed so careful is the law of the rights of an innocent purchaser, that even where the statute law avoids all contracts made by a bankrupt, *to every intent and purpose*, still, if his assignees come into chancery for a discovery, the court will protect an *innocent purchaser.*

Thus where a bill was filed for the discovery of goods purchased of a bankrupt, the defendant was allowed to plead that he purchased them bona fide for a valuable consideration paid before the commission of bankruptcy was sued out, and before he had any notice of the bankruptcy....*Har. ch.* 305. *Mitford*, 228.

We submit this part of the case without comment: trusting we have satisfactorily proved that as we are innocent purchasers the law will protect us in the enjoyment of the property against all the world, and particularly against the citizens of Georgia.

2d. As between the *innocent* purchasers and the *after purchaser* who had full *notice* of *their claim*, who has *not paid* any consideration for the property; and has only contracted *to pay* a certain sum from the avails of the land and to extinguish certain native rights; to whom by the rules of law and chancery do these lands belong?

We answer to the innocent purchaser. Here it is believed the eight cases last cited apply with additional force and of themselves prove the doctrine we maintain. Here the question is not between two *innocent individuals*, one of whom must sustain the loss.

On our side there will be a ruinous loss; on the part of the after purchaser there can be no loss; for the 1,250,000 dollars, are to be paid from the avails of the *land*, and if the lands are decreed to the innocent purchasers, as the after purchaser will never receive the money from the lands, she will never have it to pay: and as to the extinguishment of the native rights, as the consideration upon which the promise was made has failed she will not be bound for the performance.

The plain question is, *whether the innocent purchasers shall suffer all, and the United States enjoy all.*

While the rights of property are protected, and the principles of morality and law govern, there can be no difficulty in deciding this question.

In a case where a man made a conveyance to the *king* with an intent to *injure a purchaser*, the conveyance was *avoided by the purchaser....2d. Co.* 54... 11 *Co.* 74.

This was under the 27th of Eliz. which statute we admit is not law in this nation.

The case is cited to establish this principle, that in questions of property the rights of the government are controuled and regulated by the same principles of law and equity as govern in the decision of cases between individuals.

It will here be remembered, that by the pinciples of the common law no person can annul or vacate a fraudulent conveyance, who had not an interest in the thing *when the grant was made.*

In this case the *grant* was made in January, 1795, and the claim of the United States was acquired by the convention of April, 1802.

By the common law, therefore, and this case must be decided on the principles of that law and of chancery, the United States cannot hold these lands against the first grantees; much less can they hold them against innocent purchasers for a full consideration.

For " a deed, though it be *fraudulent* in its cre-
" ation, yet by matter *expost facto* may become
" good: as if one make a fraudulent feoffment, and
" the feoffee make a feoffment to *another* for *valua-*
" *ble consideration*, and afterwards the first feoffor

" also for valuable consideration, make a second " feoffment, the feoffee of the feoffee shall hold " against the second feoffment of the first feoffor" ....*Bac. ab.* 2. 607. *Sidderf.* 134.

This case is precisely in point in favor of the persons whom we represent, as will appear by the substitution of names for technical words. With this substitution it will read thus :

A deed, though it be *fraudulent* in its creation, yet by matter *expost facto* may become *good.* As if Georgia make a *fraudulent* feoffment to Glascock, &c. and Glascock, &c. make a feoffment to the New-England Mississippi Land Company, for valuable consideration, and afterwards Georgia, also for a valuable consideration, make a second feoffment to the United States ; the New-England Company, who bought of Glascock, &c. shall hold against the United States.

Even admitting a *promise to pay*, and *out of the avails of the property*, constitutes a valuable consideration.

By the principles of chancery, admitting our title at law was defective, still, as we are innocent holders for valuable consideration, and the after purchaser had notice of our claim when he purchased, chancery will decree the property to the New-England Company.

In the case of Blades *vs.* Blades, *Equity*, *Ab.* 358, there were *two purchasers* of the same land. The *second purchaser* having notice of the first purchase, and that the title was *defective*, went and

purchased. The *court decreed the property to the first purchaser.*

Some who have not devoted themselves to a knowledge of the laws, have imbibed an opinion that a fraudulent conveyance cannot, for the protection of *innocent persons*, be rendered valid against any injured person; and that the doctrine, "once a fraud and always a fraud," extends not only to enable the court to redress the wrong *at all times*, but also as *against all persons whether innocent* or guilty. There is no principle of law by which this opinion can be maintained. Every case on which we have relied is opposed to this doctrine. In every case between innocent persons the law casts the loss on that party whose act enabled the guilty person to do the wrong.

When the decree of the court will operate on the guilty person the court can redress the *injury at all times.* For a person charged with fraud, cannot avoid the demand by pleading the statute of limitation. In this sense the doctrine is correct.

We have closed a partial display of authorities, which we thought essential to the vindication of our rights....Authorities, each of which shews the tender solicitude with which the law guards the rights of innocent persons; and that it will not suffer them to be injured by the *acts* of *others* though equally innocent, nor by the claims of after purchasers.

To what mighty evils would a contrary doctrine tend! If our farmers, when they purchase a farm, are bound to go beyond the record, and examine

for the motives of men, who will be safe? By what clue shall these motives be discovered? Is it reasonable that he who keeps his demand in his pocket beyond the knowledge of the purchaser, shall take from him the property, because there was a secret collusion between some former grantor and grantee? Is this reasonable, when one trusts to the personal character of his debtor or agent, and the other examines the record and relies alone on the laws? If so, what is the use of records? Why are the grantees compelled to register their titles? But if in common cases the purchaser is bound to go beyond the record, and investigate, at his peril, the motives of each individual who was an antecedent proprietor, is he also bound to doubt the motives of the legislature of his country, when it is criminal to doubt them, when he is bound to obey and yield full faith?

The law ordains that the titles of land shall be registered, to the end *that every buyer may ascertain the rights of the seller;* and shall we be deprived of our titles for some hidden fault; some supposed defect beyond the record; which we had neither reason to suspect, nor the means to discover?

The law ordains that whoever shall be found guilty of accusing a legislature of bribery and corruption shall be fined or imprisoned, and shall we be punished to the extent of our fortunes for not believing a legislature guilty of bribery and corruption against whom we never even heard the charge?

The constitution declares full faith and credit shall be given to the acts, records and judicial pro-

ceedings of each state; and shall we be deprived of our property, and our families reduced to want, for giving that faith, in obedience to the constitution? We appeal to the known patriotism and integrity of congress; to that very constitution and the laws of our country; and to those high principles of immutable justice which are registered in heaven, and implanted in the breast of man to guide him in his duty through life.

vide ante p. 96.

In addition thereto these Covenants were in exact conformity to the Conditions upon which the original Grantees received their Grants from the State of Georgia, as may be seen in the 10th Section of the granting Act, which has the following proviso viz^t "And provided further, that this State and "the government thereof shall at no time "hereafter be subject to any Suit at Law "or in Equity, or claim or pretension "whatever, for or on account of any deduc- "tion in the Quantity of the said Territory, "or on account of the amount of the purchase "money, to be paid as aforesaid, by any re- "covery which shall or may be had on "any former or other claim or claims "whatever." The present purchasers were confident in the title of Georgia, against any pretensions public or private, and

and therefore were willing to purchase of the original Grantees on the same Conditions, under which they held from Georgia: indeed it would have been highly absurd to have insisted on any Warranty from four men for 11,380,000 Acres of Land (subject to continual rise in Value) beyond that, which they received from the State; it would have been madness in them to have given such a Warranty, & folly in us to have relied on it. ——

5/19/36